THE CONTROVERSY AMONG LUTHERANS IN THE UNITED STATES OVER PUBLIC FUNDS TO CHURCH SCHOOLS, 1960-1969

by

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ABSTRACT

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The purpose of this dissertation was to examine the controversy among Lutherans over public funds to church schools. The study dealt specifically with four groups accounting for 99 percent of all Lutherans in the United States: the American Lutheran Church, the Lutheran Church in America, the Lutheran Church-Missouri Synod, and the Wisconsin Evangelical Lutheran Synod.

Although the primary purpose of the dissertation was to examine the controversy among the Lutherans during the 1960's, an attempt was made to show that the question is of significance to the larger society in the United States. There has been a tradition of separation of church and state in the United States based, at least in part, on a particular understanding of the First Amendment, which in practice and in theory raises several questions about the relationship of church and state. These questions were dealt with briefly, to show that the problem is much more complex than would appear from a cursory reading of either the First Amendment

or American History.

It was also shown that the Lutherans in the United States have a large number of schools from the elementary level through higher education, in fact the largest number of Protestant elementary-secondary schools in the United States.

Prior to the 1960's the Lutherans in the United States were by and large opposed to public funds for church schools. This position was rooted in the Biblical tradition and the historic confessional statements of Lutheranism, particularly the Unaltered Augsburg Confession.

By the close of the 1950's, however, there appeared to be some signs of a movement toward the acceptance of limited public funds for church schools. In terms of elementary-secondary schools this included acceptance of some benefits which came to the child, such as free public transportation and school lunch programs. In terms of higher education, benefits to the student in the form of government grants and low-interest loans had become generally acceptable to the Lutherans, as well as low-interest government loans to church colleges for some buildings.

Early in the 1960's the Social Trends Committee of the National Lutheran Council carried on an extensive study of this issue at all levels of education. The committee, composed mostly of Lutheran clergymen, presented its conclusions to the National Lutheran Council early in 1963. These conclusions questioned the position of absolute separation of church and state as a genuine Lutheran position, and recommended the acceptance of public funds to church schools on a limited basis. While never officially adopted by any of the four groups under study in this dissertation, the study of the Social Trends Committee significantly paved the way for a changing position among Lutherans in the United States.

By 1965 all but the Wisconsin Evangelical Lutheran Synod had adopted substantially different positions than they had held on this issue prior to 1960.

The minutes of the churches, the periodical literature, and the minutes of the various inter-Lutheran groups demonstrated that there were strong disagreements among Lutherans about the theological and constitutional bases for a Lutheran position on the issue. It is also clear that the new position was strongly opposed by some leaders and laymen in all three of these groups. The proponents of the new position, however, won the day, and written evidence of dissent gradually disappeared.

In 1967 the Wisconsin Evangelical Lutheran Synod decided to accept public funds for their schools. Thus, by the end of the 1960's Lutherans in the United States accepted generally whatever public funds were made available through federal and state legislation.

ACKNOWLEDGMENTS

No dissertation reaches its final form solely through the efforts of its author. This one is no exception, and many people have contributed in a significant way to make the completion of this document possible.

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Cynthia Dawn, Kimberly Sue, and Cheryl Lynn demonstrated love and patience with their father when the work of his dissertation got in the way of those important events and activities which are a part of the growing-up years of all such lovely young ladies.

No one gave more of life and heart and love than my wife, "El". When I would have long ago despaired, her assurance and encouragement gently nudged me back to the task. "For better or worse", "For richer or poorer", were not slogans of a long-forgotten ceremony, but rather the "nuts and bolts" of a way of life which she lovingly chose and pursued. New Testament "agape" love was a matter of practical living for her, and the depth of her contribution to the completion of my doctoral program cannot be adequately measured. For her love and devotion to this task and its writer, I give my heartfelt thanks and love.

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TABLE OF CONTENTS

Chapter Page

I. INTRODUCTION 1

The Need for the Study 1
The Problem 3
Method 7
Organization 9

II. THE ISSUE IN BROAD PERSPECTIVE 11

Church school enrollments in the United States 11
A recent Southern Baptist Example of the problem 14
Church-state relations and the law 15
Church-state relations and politico-philosophical considerations 18
Church-state relations and theology 19
Law, philosophy and theology intertwine for the church 20
"Terrett v. Taylor" as an early example of the problem of separation of church and state 22
The 1965 federal aid for education bills . . . 23
Patterns of early religious establishment in the United States 33
The "no establishment" and "free exercise" clauses of the First Amendment 38
Eight relevant Supreme Court decisions 53

III. LUTHERAN EDUCATION IN THE UNITED STATES AND PRE-1960 LUTHERAN VIEWS ON PUBLIC FUNDS TO CHURCH SCHOOLS 59

The Growth and Development of Schools Among Lutherans in the United States . . . 59
The American Lutheran Church 61
Elementary Education 61
Secondary Education 62

Chapter Page

Higher Education 63
Theological Education 63
The Lutheran Church in America 64
Elementary Education 64
Secondary Education 65
Higher Education 65
Theological Education 66
The Lutheran Church-Missouri Synod 67
Elementary Education 67
Secondary Education 69
Higher Education 69
Theological Education 71
The Wisconsin Evangelical Lutheran Synod 71
Elementary Education 71
Secondary Education 72
Higher Education 72
Theological Education 72
Lutheran Views on Public Funds to Church Schools prior to 1960 73
Church and state in Lutheran theology 73
The Lutheran position in the United States prior to the 1960's 77

IV. THE CONTROVERSY AMONG LUTHERANS IN THE UNITED STATES DURING THE 1960's 89

The National Lutheran Council and its Committee on Social Trends 90
The Controversy within the four church groups 159
The American Lutheran Church 159
The Lutheran Church in America 167
The Lutheran Church-Missouri Synod 170
The Wisconsin Evangelical Lutheran Synod 183
Other Inter-Lutheran Statements and Actions 188
The Association of Lutheran College Faculties 188
The LCA Special Commission on Church and State 197
The National Lutheran Educational Conference 204
The Inter-Lutheran Consultation on Church and State Relations 211
Lutherans in the 1960's 217

Chapter Page

V. AN EVALUATION OF THE LUTHERAN CONTROVERSY OVER PUBLIC FUNDS TO CHURCH SCHOOLS 219

The Influence of the Social Trends Committee 219
Contradictory positions in the Lutheran arguments 220
The relation of Lutheran and Roman Catholic positions 227
Economic pressures as a contributing factor 230
The new Lutheran position 231
A look to the future 232

BIBLIOGRAPHY 234

APPENDIX A1

The American Lutheran Church A1
The Lutheran Church in America A2
The Lutheran Church-Missouri Synod A3
The Wisconsin Evangelical Lutheran Synod A4

CHAPTER I

INTRODUCTION

The Need For The Study

Very little has been done on the question of public funds to church schools among Lutherans in the United States. What little information which is available in books is usually not a major consideration in them. Allan Hart Jahsmann, in What's Lutheran In Education?, deals with the problem briefly, summarizing the position of the American Lutheran Church and the Lutheran Church-Missouri Synod prior to 1960. Walter H. Beck deals with the issue briefly in his work, Lutheran Elementary Schools in the United States. It is also dealt with in Albert G. Huegli's excellent work, Church and State Under God, but only to the extent of giving an historical survey of the Lutheran position, particularly in the Lutheran Church-Missouri Synod, and then only up to around 1962 or 1963. There are no studies on this specific topic as it has developed among the Lutherans in the United States during the 1960's. This study is an attempt to fill this void, and to give an historical analysis of how this problem was dealt with in a decade in contemporary history when massive aid was made available to the private schools in the United States. It is particularly important to do this inasmuch as the Lutherans in the United States have the largest system of elementary-secondary schools among Protestants in the United States, and an impressively large system of colleges and universities as well.

The study is also important because it concerns not only Lutherans in the United States, but is also of concern to all religious bodies. Indeed it is of importance to the entire body politic because it deals with one aspect of the larger issue of the relationship of church and state in the United States.

For a number of years the general question of church-state relationships has been of special interest to the writer of this dissertation, who was personally involved as a clergyman in an historic religious movement which is strongly committed to the separation of church and state. While in graduate school the writer pursued the more specific problem of public funds for church schools and the place of religion in the public schools.

During the early 1960's the writer's interest in this problem increased with the introduction of federal legislation which provided massive educational assistance for education at all levels, and included some assitance to church schools. Thus the writer's theological and educational background, as well as continued interest in church-state relations have all contributed to his interest in the study of this controversy among Lutherans.

The Problem

The purpose of this dissertation is to trace and evaluate the controversy over public funds to church schools, particularly as that controversy has developed among the four major groups of Lutherans in the United States during the decade of the 1960's. Originally the intent of the study had been to view the controversy in terms of parochial schools only. This, however, would be both a misleading and a difficult approach, inasmuch as concern for government aid to church schools at the elementary-secondary level and the college level intertwine throughout the literature.

This study includes the American Lutheran Church, the Lutheran Church in America, the Lutheran Church-Missouri Synod,and the Wisconsin Evangelical Lutheran Synod. The appendix to this study contains four charts which show the antecedents of these four groups of Lutherans in the United States. Two important considerations were taken into account in focusing on this particular group. The first consideration related to the high enrollment at the elementary-secondary level, the highest enrollment among Protestants in the United States. Lutherans are also active in higher education. In the fall of 1968, for example, the Lutheran Church in America along reported 33,385 students enrolled in its 19 colleges in 15 states and Canada, including two junior colleges.[1] The first consideration, then, related to the fact that Lutherans in the United States are actively engaged in the educational enterprise from the elementary grades through higher education, and that they are engaged in this enterprise at such proportions as to be considered a significant factor in the formal education arena in the United States.

A second consideration in focusing on these four particular groups relates to the problem of size and scope. In 1968 there were eleven Lutheran groups reported in the United States ranging in size of confirmed membership from 2,274,383 in the Lutheran Church in America to 500 in the Eielsen Synod. I have chosen the American Lutheran Church, the Lutheran Church in America, the Lutheran Church-Missouri Synod, and the Wisconsin Evangelical Lutheran Synod as representing the major focus of Lutheranism in the United States on the basis of their relative size. In 1968 these four groups reported a total confirmed membership of 6,233,187. The smallest of these four, the Wisconsin Evangelical Lutheran Synod, reported a confirmed membership of 256,792. The seven other groups (Synod of Evangelical Lutheran Churches[2], Evangelical Lutheran Synod, Church of the Lutheran Confession, Apostolic Lutheran Church of America, Church of the Lutheran

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[1] Lutheran Church in America, 1970 Yearbook, Philadelphia: Board of Publications of the Lutheran Church in America, 1969, p. 352.

[2] This was the former Slovak Evangelical Lutheran Church.

Brethren of America, the Eielsen Synod, and the Association of Free Lutheran Congregations) reported only 42,403 confirmed members among their ranks in the United States. Of these seven, the largest group (Synod of Evangelical Lutheran Chruches) reported a total confirmed membership of only 15,247.[1] Last fall this group merged with the Lutheran Church-Missouri Synod. It is perfectly clear from these figures that the four groups under consideration in this paper represent the mainstream of Lutheranism in the United States, accounting for over 99 percent of all confirmed Lutherans in the United States. While the Wisconsin Evangelical Lutheran Synod accounts for just over four percent of all confirmed Lutherans in the United States, its absolute size of one quarter of a million confirmed members seems to argue strongly for its inclusion in the topic under consideration in this paper, as well as its relatively extensive system of church schools at all levels. Furthermore the Wisconsin group is the most theologically conservative of the four groups under consideration and thus brings to the study a broader spectrum of belief than would be the case if it were excluded. This allows for a more warranted conclusion that the study is a genuine assessment of Lutherans in the United States, even though the seven small groups previously mentioned have been excluded from the study.

The American Lutheran Church has three seminaries, ten colleges and universities, one junior college, two high schools, and 173 elementary schools.[1]

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[1] Lutheran Church in America, 1970 Yearbook, p. 372.

The Lutheran Church in America has seven seminaries, 15 colleges and universities, two junior colleges, and 17 elementary schools.[2]

California Lutheran College in Thousand Oaks, California is operated jointly by the American Lutheran Church and the Lutheran Church in America.[3]

The Lutheran Church-Missouri Synod has two seminaries, one senior college, three four-year colleges, nine junior colleges, 25 high schools, and 1,281 elementary schools.[4] In addition, Valparaiso University in Valparaiso, Indiana is closely related to the Lutheran Church-Missouri Synod.

The Wisconsin Evangelical Lutheran Synod has one seminary, two four-year colleges, one junior college, four academies on the high school level, eight area high schools, and 236 elementary schools.[5]

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[1] American Lutheran Church, 1970 Yearbook, Minneapolis: Augsburg Publishing House, 1969, pp. 133-138, 293, 304-305.

[2] Lutheran Church in America, 1970 Yearbook, pp. 50-51, 351-352.

[3] American Lutheran Church, 1970 Yearbook, p. 63.

[4] Lutheran Church-Missouri Synod, The Lutheran Annual 1970, St. Louis: Concordia Publishing House, 1969, pp. 56-57.

[5] Wisconsin Evangelical Lutheran Synod, 1970 Yearbook and Directory, Milwaukee: Northwestern Publishing House, 1969, pp. 21, 80-82, 118-120.

Greatest emphasis has been placed on the study of the Social Trends Committee of the National Lutheran Council in the early 1960's, because it was the only inter-Lutheran group to deal exclusively with this topic over an extended period of time.

Method

The historical method is used in this study in examining primary and secondary sources on this issue. These have included published minutes of the churches at their regular conventions, periodicals of Lutherans and other national religious periodicals. In addition, works of history, educational history, and church history which give background material have provided an important source of information for this study. A Basic History of Lutheranism in America by A.R. Wentz, published in 1955 by Muhlenberg Press, Philadelphia, and revised in 1964, has provided one of the most important sources of information on contemporary Lutheranism in the United States. Other special histories of the various branches of Lutheranism in the United States have ~~also~~ provided valuable background information.

~~It has~~ already been pointed out that some attention has been given to this issue in Beck, Huegli, and Jahsmann. A great deal of new primary source material has been used in this study. Included in these sources are the Agendas and Minutes of the Social Trends Committee of the National

Lutheran Council[1] from 1959 through 1962, as well as the successive drafts of that committee's paper on the use of public tax funds for nonpublic schools. Many letters from leading Lutheran church leaders and educators have also been used, as well as the "Reports and Minutes" of the National Lutheran Council. "The Journal of the Lutheran College Faculties," 1961, provided valuable information on this issue, as well as the "Papers and Proceedings of the National Lutheran Educational Conference," 1962 and 1964. The Minutes of the inter-Lutheran Consultation on Church and State held in Minneapolis in 1964 also provided valuable information concerning the discussion of this issue on an inter-Lutheran basis. "The National Lutheran," monthly periodical of the National Lutheran Council, also provided valuable information related to this study on an inter-Lutheran basis.

Among the four Lutheran groups being studied, the new primary source material for this study has been drawn from the Reports and Minutes of the General Conventions of these four Lutheran groups. The annual Yearbook of each group has provided up-to-date statistical data on each of the groups. The periodicals of the groups have provided primary source material on the controversy investigated in this study. Of particular help were "The Lutheran Standard" of the American

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[1] Organized in 1918 as an agency of the church bodies which were to become the American Lutheran Church and the Lutheran Church in America.

Lutheran Church; "The Lutheran" of the Lutheran Church in America; "Lutheran Witness" and "Lutheran Education" of the Lutheran Church-Missouri Synod; and "Northwestern Lutheran" and "The Lutheran Educator" of the Wisconsin Evangelical Lutheran Synod.

The State and Non Public Schools, published by the U.S. Office of Education, provided valuable statistical material on church schools in the United States, as well as their publication, Statistics of Non Public Elementary and Secondary Schools, 1965-66. Data on recent higher education enrollments was provided in the Opening Fall Enrollments-Higher Education, 1965 of the U.S. Office of Education.

Organization

The study is divided into five chapters. Chapter one is an introduction to the problem showing the importance and need of the study, the primary source material and methodology used, the nature of the problem under consideration, and the general organization of the paper.

Chapter two deals with the problem in broad perspective and attempts to show the broad context of church-state relations in the United States under which this study falls. It also attempts to show some of the complex difficulties and tensions which are involved in the broad issue of "separation of church and state", as well as the more specific issue of "public funds for nonpublic schools."

Chapter three is an historical survey of Lutheran education in the United States to the present time, and a summary of Lutheran views on the issue of public funds to church schools prior to 1960. The purpose of this chapter is to place in historical perspective the central question of the study which is dealt with in chapter four.

Chapter four traces the developing position of Lutherans in the United States on the issue of public funds to church schools during the 1960's. In this chapter it is shown how the position of Lutherans in the United States has changed, and how the position has been argued in significant inter-Lutheran groups, as well as the specific actions which have been taken by the four church groups under consideration in this study.

Chapter five is an evaluation of the historical material and attempts to draw what generalizations may be reasonably deduced from the sources. It also attempts to show what have been the important contributing factors in the change of position among Lutherans during the 1960's, what theological-philosophical implications the change of position among Lutherans holds for Lutherans and other religious groups in the United States, and what philosophical implications the position of Lutherans holds for the larger society in the United States.

It is hoped that the primary source material in this study will add to the knowledge of the particular controversy of public funds to church schools and will supplement other studies in the area of church-state relations in the United States.

CHAPTER II

THE ISSUE IN BROAD PERSPECTIVE

The controversy being examined in this study is not limited to the Lutherans vis-a-vis the larger society. Indeed, it is a problem of deep concern to all religious groups in the United States which are involved in extensive educational programs. This becomes clear when one examines the significant part that nonpublic schools have had in our nation's total educational resources. During the first half of the twentieth century there was a steady increase in nonpublic elementary and secondary school enrollments. The enrollment in these schools in the continental United States in 1899-1900 was 1,351,722. By 1953-1954 the enrollment in these schools had increased to 4,330,163. The increase, however, was not only in absolute size of enrollment, but also in percentage of total enrollments in all full-time elementary and secondary schools in the continental United States. While the 1899-1900 nonpublic school enrollment accounted for only 8.02 percent of the total enrollment in the continental United States, by 1953-1954 the nonpublic school enrollment accounted for 13.08 percent of the total elementary and secondary enrollment in the continental United States. In terms of enrollment ratio there was also a marked increase. In 1899-1900 the enrollment ratio had been 11:1 in favor of the public schools. By 1953-54 the ratio had decreased to 7:1.[1] By 1960-61 nonpublic elementary and secondary enrollments had increased to 5,736,480, and by 1965-66 to 6,304,722, accounting for 13.0 percent of all enrollments in elementary and secondary schools in the continental United States. Despite an enormous increase in the public school enrollment from 1960-61 (37,464,074) to 1965-66 (48,448,276), the enrollment ratio between public and nonpublic schools still remained close to 7:1.

In the 1965-66 survey, over 91 percent of the nonpublic elementary schools reported some religious affiliation. These schools accounted for 96 percent of the nonpublic elementary school enrollment. Similarly, 78 percent of the nonpublic secondary schools reported some religious affiliation. These schools accounted for 81 percent of the nonpublic secondary school enrollment. About 70 percent of all the nonpublic elementary schools were affiliated with the Roman Catholic Church. These schools accounted for 89 percent of all nonpublic elementary school children. Similarly, 60 percent of all secondary schools included in this survey were affiliated with the Roman Catholic Church. These schools accounted for 81 percent of all nonpublic secondary school children.

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[1] Fred Francis Beach and Robert F. Wills, The State and Non Public Schools, Washington, D.C.: U.S. Government Printing Office, 1958, pp. 1-2.

Of more central concern to this study is the fact that the highest Protestant enrollments were among the Lutherans with 171,598 elementary students and 16,923 secondary students for a total enrollment of 188,521 or 3.16 percent of all church related elementary and secondary school enrollments in the United States. The Seventh Day Adventists had the second largest enrollments among the church related Protestant schools, for a total of 62,603 students.[1]

One can reasonably conclude from these figures, then, that even at the elementary and secondary levels, church related schools are continuing to play a significant part in the contemporary educational scene, and they are continuing to grow. With this growth economic demands continue to increase among those groups which carry on educational programs. The Lutherans in the United States, as the Protestant group with the largest enrollment of elementary and secondary students in its schools, must be considered a significant element among religious groups in the United States, in terms of the issue of public funds for church schools.

In addition, it is also significant to note that in 1965-66 the total enrollment in higher education in the United States was 5,967,411. Of this number 1,967,471 students were enrolled in private colleges, almost one-third of the total enrollment in higher education. The majority of these private colleges are church related colleges, representing a very significant part of the higher education scene in the United States.[1]

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[1] U.S. Office of Education, *Statistics of Non Public Elementary and Secondary Schools, 1965-66*, Washington, D.C.: U.S. Government Printing Office, 1968, pp. 8, 10, 26.

One contemporary example of this problem outside the Lutheran Church is seen in several instances occuring as recently as 1966 within the Southern Baptist Convention, a group which holds a strong belief in separation of church and state. In Florida the State Baptist Convention reduced its annual support to Stetson University from $270,000 to $150,000. The reason for this $120,000 reduction in support was that Stetson had accepted $845,000 in federal grants to build a new science building and to add to the facilities of its law school. Not only did the state convention reduce its annual support, but in addition, it seriously debated whether to cut off all funds for the Baptist school. At the same time the Kentucky Baptist Convention decided in favor of federal loans for Baptist backed schools at the discretion of their administrators. Arkansas and Louisiana Baptists decided against the accepting of grants by Baptist schools, but in favor of the accepting of loans by Baptist Schools. Texas and Georgia Baptists rejected even federal loans. Arizona Baptists rejected loans and grants, but left church institutions free to accept certain government payments "for services rendered."[1] The significant point to be drawn from these examples is that the state conventions did not base their decisions on legal considerations. Rather, they based their decisions upon a particular theological-philosophical point of view regarding church-state relations. It is clear, for example, that Stetson was legally entitled to the $845,000 in federal grants. The legal point, however, was of little or no consequence to the Florida State Baptist Convention. Their concern was that the accepting of the grants violated the separation of church and state, as viewed from their particular theological-philosophical point of view.

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[1] U.S. Office of Education, Opening Fall Enrollments-Higher Education, 1965, Washington, D.C.: U.S. Government Printing Office, 1966, p. 5.

The problem of church-state relations is not a simplistic one. On the contrary, it touches upon at least three important areas, namely theology, philosophy and the law, and all of these areas are closely related to this problem.

The question concerning the law is one which looks at what the law allows and/or prohibits. This is not always easy to determine, however, inasmuch as the law has two aspects, namely the adjudicative and the statutory aspects. The statutory aspect of the law is the law as it has been codified. Thus one can look at the federal and state constitutions, and at federal, state and local statutes in order to determine what the law allows and/or prohibits in a given situation. The adjudicative aspect of the law tells us what it is that the law means, or, more precisely, what the courts have told us that the law means. This dimension of the law is always developed after the statutory aspect of the law, and as a result of disagreement over what the statutory law means, or whether or not the statutory law is constitutional. Thus, in determining the meaning of the law in questions of separation of church and state in general, and public funds to church schools in particular, one must look at both the statutory and the adjudicative aspects of the law. It is, in the final analysis, the adjudicative aspect of the law which is crucial for practice in the schools, for the statutory law is clarified and interpreted in the adjudicative law. Both the adjudicative and the statutory aspects of the law, however, have inherent in them a practical problem which is central to the issue under consideration in this study. Neither of these aspects of the law covers all situations, and thus we are always in the process of finding out what the law means. This is only to say that the law in a democratic society is dynamic rather than static.

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[1] "Eyeing Federal Money", Time, Vol. 88 (Dec. 2, 1966), p. 78.

Of more fundamental concern than the meaning of the law is the question of what the law ought to say. This is the philosophical dimension of the law and it, in turn, has two dimensions. In the first place, for example, the issue under consideration in this paper is continuing to be debated even while this paper is being written. Litigation is continually finding its way through the courts, and each time a decision is reached we are provided with another clue as to the meaning of the law. Along with the litigation, and closely connected with it is the continuing debate as to what the law ought to say. Witness the attempt during the 1960's to bring about a constitutional amendment to allow some kind of prayer and Bible reading in the schools. This effort received its first national prominence when the Becker amendment was introduced by Representative Frank Becker of New York early in 1964. When it was referred to the House Judiciary Committee, however, the chairman, Representative Celler, successfully bottled it up in committee by extending the hearings for almost three months. It was revived by the late Senator Everett Dirksen, the Senate Minority leader, early in the spring of 1966 and thereafter became known as the Dirksen Amendment.[1] The text of the bill indicates a direct attempt to nullify the Supreme Court decisions in "Engel v. Vitale" and "School District of Abingdon Township v. Schempp", both of which are referred to later in this chapter:

> SECTION 1: Nothing contained in this Constitution shall prohibit the authority administering any school, school system, education institution, or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer.
> SECTION 2: This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of 3/4 of the several

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[1] Herbert Kliebard, Religion and Education in America, Scranton, Pa.: International Textbook Co., 1969, p. 20.

> States within seven years from the date of its submission to the States by Congress.[1]

During the hearings held by the Senate Subcommittee on Constitutional Amendments, it became clear that the leaders of many of the major religious denominations in this country opposed the amendment. Senator Dirkson, on the other hand, was able to point to considerable "grass roots" support for his Amendment. When the prayer amendment finally reached a vote on September 21, 1966, 49 of the 86 senators present voted for it and 37 against. The vote was only nine votes short of the required two-thirds.[2]

By a comparatively small margin, then, a move designed to break with the traditional American pattern of judicial interpretation of church-state issues was defeated.

Central to our consideration here, however, it is important to note that the arguments proposed for and against such an amendment are arguments based upon certain politico-philosophical commitments and assumptions which lie beneath the law. They are arguments about what the law ought to say, not arguments about what the existing law means. Further, they are arguments based upon one's judgment of such things, for example, as the nature of man or the nature of the state. Usually they are framed in an "if-then" kind of framework. Within this framework one argues that since "X" is true concerning the nature of man, the state, or whatever, then practice "Y" should follow as a way of enhancing that particular view of man, the state, or whatever. These kinds of arguments, or practical syllogisms, are fundamentally philosophical in nature and are foundational to both the statutory and the adjudicative aspects of the law in any state.

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[1] Cited in Kliebard, p. 21.

[2] Kliebard, p. 21.

In the second place, the procedural matters of the law are also based upon underlying politico-philosophical commitments and assumptions. Thus the procedural matters of the law are not carried on capriciously. The division of powers (executive, legislative, and judicial), the principle of trial by a jury of one's peers, the principle of a man's innocence before the law until proved guilty, the principle of the right to legal counsel, etc., are all based upon politico-philosophical commitments about such things as the nature of man and the state, and are attempts to guarantee that these views will be protected in the processes of justice.

The philosophy of law, then, has two dimensions, both based upon underlying politico-philosophical commitments. The first **dimension** is concerned with what the law ought to say in order to enhance these commitments. The second dimension is concerned with how the law ought to proceed in order to enhance these commitments.

For the church there is also the question of its theological viewpoint in considering matters of the law. While there is disagreement as to whether theology is merely a special branch of philosophy or a discipline in its own right, it is at least clear that there are theological-philosophical considerations for the church, as well as politico-philosophical considerations, which warrent serious consideration in making its decisions in questions of the relationship between church and state. These theological-philosophical considerations have to do with the theological position of the church on at least such things as the church's view of God, man, the church, and the state.

In coming to grips, then, with the question of practices which have to do with the relationship of the church and the political state in any society, and in this society in particular, all three of these matters must be given consideration by the church. They may be interrelated in argumentation, but they are distinct, and the church would be remiss to ignore any one of them. As an example, in opposing a bill to provide funds for the support of teachers of the Christian religion, the Virginia Baptists argued in 1785:

> no human laws ought to be established for this purpose; but that every person ought to be left entirely free in respect to matters of religion; that the Holy author of our religion needs no such compulsive measures for the promotion of his cause; that the Gospel wants not the feeble arm of man for its support; that it has made, and will again through divine power make its way against all opposition; and that should the Legislature assume the right of taxing the people for the support of the Gospel, it will be destructive to religious liberty.[1]

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[1] Conrad H. Moehlman, The Wall of Separation Between Church and State, Boston: Beacon Press, 1952, p. 80.

The argumentation followed here is both theological and politico-philosophical in its nature. It argues against a certain kind of legislation on the theological grounds that certain things are true about the nature of God, and on the politico-philosophical grounds that religious liberty is to be valued. When the Baptists argue that "the Gospel wants not the feeble arm of man...that it...will...through divine power make its way against all opposition", they are arguing from a theological position which is called the doctrine of providence, i.e., that God moves in such a way as to bring about His designs through his own power, and regardless of any opposition. The argument is clearly a theological one. When they further argue that "...taxing the people for the support of the Gospel...will be destructive to religious liberty", they are arguing from a politico-philosophical position which values religious liberty. In the context it is not possible to show any direct relationship between this politico-philosophical argument and the **preceding** theological argument. While it is altogether possible that this latter politico-philosophical argument has its genesis in the former theological argument, this is certainly not clear in this particular context, nor is it central to the issue under consideration. The important inference to be drawn is that the grounds for argumentation in matters pertaining to church-state relationships may be both theological and politico-philosophical.

If adequate consideration is to be given to the question of separation of church and state in general, and public funds to church schools in particular, then the church must examine all three of these areas, namely the problems which inhere in the law, philosophy, and theology.

The problem of separation of church and state has had a long history of controversy in the United States. In 1776, for example, the Legislature of Virginia had passed an act confirming the rights of the church to all its lands and other property. In 1801, however, the same Legislature asserted that its act of 1776 was inconsistent with the bill of rights and the constitution of Virginia and was, therefore, void. Thus it asserted its right to all the property of the Protestant Episcopal Churches in the parishes of the state of Virginia, and directed that certain lands belonging to the church be sold, the proceeds to be used for the support of the poor of the parish. When this legislation was protested in the courts, however, it was declared invalid in "Terrett v. Taylor". Mr. Justice Story, delivering the court's opinion in 1815, argued in part that:

> ...it will require other arguments to establish the position that, at the revolution, all the public property acquired by the Episcopal Churches, under the sanction of the laws, became the property of the state...the property was, in fact and in law, generally purchased by the parishioners, or acquired by the benefactions of pious donors. The title thereto was indefeasibly vested in the churches, or rather in their legal agents....The dissolution of the regal government no more destroyed the right to possess or enjoy this property than it did the right of any other corporation or individual to his or its own property...[1]

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[1] Cited in Joseph Tussman, The Supreme Court on Church and State, New York: Oxford University Press, 1962, p. 4.

This important decision established the right of the churches to hold property and established it as an inviolable right. Although the decision has implications for all groups in the area of property rights, it is important for the purposes of this paper to note that a precedent was established which protects churches from seizure of property by the government, a clear cut decision in favor of the separation of church and state.

The period of time chosen for this study is of particular importance in light of the important federal legislation which has been enacted. The 88th and 89th Congress enacted no less then 24 major pieces of educational legislation.[1] Of major importance among these were the Elementary and Secondary Education Act of 1965, and the Higher Education Act of 1965.

The following examples are given as an indication of the enormous sums of public money which in some measure are designed so that church schools may, either directly or indirectly, derive aid from public funds.

Title I of the Elementary and Secondary Education Act provides funds to school districts under State plans approved by the U.S. office of Education. Funds may be used by local school authorities for the benefit of disadvantaged children in any appropriate manner. While administrative supervision of programs is the responsibility of public school authorities, funds may be used to benefit both public and nonpublic school children, through such arrangements as dual enrollment, educational media centers, mobile education services and equipment, and educational radio and television. Where public and nonpublic school pupils share the same facilities under the program, they may not be separated by religion. Congress appropriated $775 million for the first year of the program with the provision that payments may be made to the individual states and school districts based on the maximum authorization of approximately $1,165,095,244.[1]

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[1] U.S. Office of Education, Education '65, Washington, D.C.: U.S. Government Printing Office, 1966, p. 2.

Title II of the Elementary and Secondary Education Act provided $100 million for school library improvements and alloted the full amount for fiscal 1966. In addition to library books it authorized the purchase of textbooks, periodicals, documents, tapes, records, physical facilities, and equipment, as well as the use of funds for administration and financing. Funds are allocated under State plans on the basis of public and nonpublic elementary and secondary school populations. The State designates an agency to administer its plan which must be approved by the Office of Education. Materials are loaned to private school pupils and remain the property of the designated public agency.[2]

Title III of the Elementary and Secondary Education Act is designed to help local school districts relate research to practice through the support of creative supplementary centers and services. Supplementary centers created under

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[1] Ibid., p. 75.

[2] Ibid., p. 77.

Title III must seek to improve education by providing services not now available to the children within a given community, raise the quality of educational services, and stimulate the development of model programs attuned to a school system's needs. To this end Congress appropriated $75 million for supplementary centers for fiscal 1966. While the facilities must be owned and administered by local public school authorities, supplementary center services must be available for nonsectarian instruction for public and nonpublic school children equally.[1]

Title II of the Higher Education Act of 1965 authorizes a 3-year program of assistance to institutions of higher education to develop library resources, train librarians, and conduct research in the library sciences. The act authorized $70 million in expenditures for all purposes in fiscal 1966 and expenditures up to $72,315,000 in fiscal 1967. Priority would be given institutions able to demonstrate need. Funds could be used too for purchase of books, including binding, audiovisual aids, documents, periodicals, tapes, recordings, and other needed library materials. Basic and supplementary grants would double, and in some cases triple, funds for library development in poorer colleges. No grants could be made to an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.[1]

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[1] Ibid., p. 79.

Title III of the Higher Education Act provided assistance to both 2- and 4-year colleges which could demonstrate that they were "developing institutions making a reasonable effort to improve the quality of their instruction, administration and student services; struggling for survival for financial or other reasons, and isolated from the mainstream of academic life." The restriction in Title II regarding an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects, also applied.[2]

Title IV of the Higher Education Act of 1965 broadened and supplemented the student aid program created by the National Defense Education Act of 1958 and the work-study program for students from low-income families established in the Economic Opportunity Act of 1965. Educational Opportunity grants of from $200 to $800 annually were authorized to make new aid available to students from low-income families. To qualify, students had to be accepted for enrollment but financially unable to remain in college without opportunity grants. These grants could continue through undergraduate study for a maximum of four years if the financial need continued. For borrowers who taught after terminating their studies, cancellation of a loan was permitted at the rate of ten percent a year up to 50 percent of the amount of the loan. Originally, under Title II of the National Defense Education Act of 1958, this had applied only to public school teachers. Under Title IV of the Higher Education Act of 1965 this was amended to extend the cancellation entitlement to borrowers who taught in nonprofit private schools and in institutions of higher education. A further amendment permitted an additional 50 percent of the loan to be cancelled at the rate of 15 percent annually for those borrowers who taught in certain eligible schools located in low-income areas. The act also provided for a new program to help students obtain long-term, low-interest loans from eligible lending institutions. The college work-study program of this act provided needy students with part-time work at their colleges, or in public or non-profit community agencies. The restriction concerning religious institutions, departments or branches noted under Title II and III above did not apply. This sort of aid would fall under what most proponents of public funds to church schools would call the "child benefit theory."[1]

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[1] U.S., Congress, House, Public Law 89-329, Washington, D.C.: U.S. Government Printing Office, 1965, pp. 9, 10.

[2] Ibid., pp. 11-13.

Title VI of the Higher Education Act of 1965 authorized a grant program to help colleges and universities buy modern teaching equipment and materials and to do minor remodeling necessary to make proper use of it. It also authorized additional funds to improve the quality and quantity of educational television for colleges. The federal grants, which normally amounted to 50 percent of project costs, could be used to supply classrooms, libraries, or audiovisual centers with laboratory and other equipment (projectors, screens, records, sound systems), audiovisual materials (such as films, filmstrips, transparencies, and tape and disk recordings), closed-circuit television, published materials other than textbooks, and the like. Science, mathematics, foreign languages, history, geography, government, education, the arts, English, and other humanities are areas covered by the grants. No grants could be made to an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.[1]

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[1] Ibid., pp. 14-36.

Several significant conclusions can be drawn from a careful examination of the data contained in this legislation. First, it is perfectly clear that the federal government has moved in the direction of providing enormous sums of money for the development of education in the United States at all levels, from elementary education through higher education. Second, it is also clear that a great deal of this money has been allocated in such a way as to benefit, not only private schools in general, but also, either directly or indirectly, church-related private schools. Third, it is clear that while funds for elementary and secondary church schools are always allocated in an indirect way, i.e., for services of benefit to the student rather than the institution and under the control of public officials, funds for church schools at the higher education level are in almost all cases clearly allocated on a direct basis to the institution. While attitudes are often, if not always, extremely difficult to assess, one can reasonably infer that Congress does not see direct grants to church-related institutions of higher education in some instances as a departure from whatever notion its members may have regarding the separation of church and state in the United States. It is not clear at this writing to what extent this direction will continue in the future, or if the attitude toward funds given directly to church-related institutions of higher education will expand to include elementary and secondary church schools, where funds are presently allocated on a far more indirect basis, i.e., to benefit the student rather than the institution. Finally, it is not yet known if the Supreme Court will hear cases on the constitutionality of this Congressional legislation or, if it does, what the nature of this decision will be. The direction of the Congress and the courts can have a far-reaching affect on the future development of education in the United States.

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[1] Ibid., pp. 43-48.

The broad and complex issue of church-state relationships in the United States is reflected in many facets of our society. We see it in our tax structure, in our Sunday closing laws (often referred to as "blue laws"), stamped phrases on coins, the Senate chaplain, and the use of chaplains in the armed forces. Of central importance to this issue, and to this dissertation, are the first and 14th Amendments of the United States Constitution:

> I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; orabridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[1]

> XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[2]

While there are students of jurisprudence who deny the legality of the latter of these two amendments on the grounds that it was forced upon the southern states during reconstruction days without an opportunity for dissent, it does stand currently as legally binding upon all of the states. Its significance for this study is that it clarifies the meaning of the First Amendment by making it explicitly applicable to all the States, and thus a guide for the relation of all citizens, not only to the federal government, but to State

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[1] Emmanuel Celler, The Constitution of the United States, Washington, D.C.: U.S. Government Printing Office, 1963, p. 14.

[2] Ibid., p. 19.

(and thus local) governments.

At first glance the meaning of the First Amendment may seem obvious, but on closer examination it raises some important questions concerning what has allegedly been the obvious. Joseph Tussman has succinctly phrased these questions in one insightful paragraph:

> The First Amendment in its attractive brevity leaves much unstated and seems to take much for granted. Even its spirit is elusive. Is it the practical expression of "a religious people"? Or is it a tolerant statement of commitment to a secular experiment? Does it indeed put us "under God"? What is "establishment" and what is an "exercise" of religion? The Amendment does not explain itself.[1]

At least four areas of concern, then, are involved in an analysis of the meaning of the First Amendment, the fourth one of which is the most significant in this study.

First, the religious clauses of the First Amendment are only part of the First Amendment, which is itself only a part of the original ten amendments, or Bill of Rights, attached to the Constitution. They are not isolated statements to be interpreted out of context. Other parts of the First Amendment protect the freedom of speech, press, and assembly, and in the absence of a religious clause, these would seem to provide adequate protection for the freedom of religious belief, worship, proselytizing, and criticism. Is the religious clause a redundancy, or should it be interpreted as having a narrower scope in protecting something which is not protected by the other clauses?

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[1] Tussman, p. xiii.

Second, the Amendment speaks specifically of action by Congress. At the time of its adoption some of the States had religious establishments and the statement seems, in part, to protect State establishments against Congressional action. In point of fact the entire Bill of Rights was considered to be a limitation only upon the power of the Federal government. The 14th Amendment, mentioned above, is now, however, generally considered to mean that the First Amendment limits action by State governments also.

Third, the First Amendment speaks of religion, and not specifically of churches. "Religion" surely has a broader scope than "organized religion." The Amendment, then, is not only concerned with churches. It is also concerned with the freedom of nonbelievers as well as believers, and the prohibition of establishment may reach beyond the prohibition of an official church to denying the preferred status of any doctrine or creed.

Fourth, the Amendment speak of two separate things - "establishment" and "free exercise". While we shall look at the problems of each one of these separately, they are not unrelated, and the interpretation of one will have a direct bearing on the interpretation of the other. Tussman again succinctly analyses the problem inherent in the two phrases:

> The freedom to worship as one thinks best seems to be intrinsically valuable; but it is not necessarily incompatible with the existence of a religious establishment. England has an established church, but there

> is also freedom of worship outside the establishment, and freedom for nonbelievers as well. Are we against establishment, nevertheless, because of the threat it poses to freedom of worship - so that the establishment clause is instrumental to the end expressed in the free exercise clause? Or does the point of the establishment clause lie beyond its contribution to religious freedom and in its expression of the ideal of a secular society, with freedom of worship thrown in as a boon to believers? Much turns on which clause we emphasize. Aid to parochial schools, for example, seems to facilitate the free exercise of religion; it is also held to threaten the separation of church and state. In this controversy those seeking aid generally stand on the free exercise clause; those opposing, on the establishment clause. My point is simply that the twofold character of the religious part of the First Amendment poses some problems.[1]

In considering the relationship of the two clauses - "free exercise" and "no establishment" - it is important to note that many different forms of establishment coexisted in this country's colonial period, and that they had gone through an interesting series of changes by the time the First Amendment was being written.

One pattern of establishment was found among the Puritans in Massachusetts, but even in this small geographical area it is hard to generalize. For example, both Boston and Plymouth established Theocratic states, but the Pilgrims of Plymouth had cut their ties with the mother church, while the Puritans of Boston considered themselves reformers within the Church of England. Thus there were some minor differences in their patterns of establishment. Both groups, however, followed the pattern of establishing a state church, created different classes of citizenship, placed religious authority on a higher plane than civil authority, and tolerated little, if any, religious dissent. The pattern in the Massachusetts Bay colony followed essentially the lines of that established in Geneva. Public worship was a privilege only for the established church, financial support for the church affairs came directly from public taxes, and the power of the civil government was used to enforce religious belief.

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[1] Ibid., p. xiv.

In Virginia and other southern colonies, a different form of church-state relations existed. In principle, the colony of Virginia was part of the diocese of the Bishop of London, and the Virginia Assembly officially declared the Church of England to be the established church in 1624, but the actual ties between the Virginia colonists and the mother church remained rather loose. After the execution of Bishop Laud in 1645, whatever loose ties had existed virtually disappeared. Although the Anglican establishment prevailed in Virginia until the Revolutionary period, the religious zeal of the Virginia colonists was not nearly as fervent as that of the New England colonists. Clearly, the State and not the Church, was the dominant partner in the church-state relationship in Virginia.

The Middle colonies were settled, by and large, by a diverse religious population, and no single clear-cut pattern of establishment was developed. Under the influence of the Quakers religious toleration flourished in Pennsylvania and in parts of New Jersey. Maryland and Rhode Island provided a refuge for persecuted minorities, Rhode Island having been developed under refugees from religious persecution in Massachusetts. Late in the sixteenth century the Reformed Church of Holland became the established church in New York. However, with the exception of a brief period around the early part of the seventeenth century, when Peter Stuyvesant attempted to stamp out religious dissent, religious toleration was generally practiced, and continued to flourish after the English took control of the colony. By 1693, New York's General Assembly extended religious toleration to all Protestant Christians, thus creating a broadly based religious establishment, and in 1695, the New York State Assembly clearly specified that in certain counties Protestant ministers other than Anglicans could be paid out of public funds.

From the end of the seventeenth century through the constitutional period, existing forms of establishment went through various modifications moving away from a pattern of a single established church toward a pattern where several religious denominations could enjoy a privileged relation to the state. The Massachusetts charter issued by William and Mary in 1691 broadened the base of the establishment from the Congregational church to all Protestants and made it possible for citizens other than the Congregationalists to vote. In New England, generally, it became possible by the early part of the eighteenth century for each town to elect its own minister who would be supported out of public funds. In Virginia, too, the movement was so strong in the direction of greater religious toleration and disestablishment that by 1784 a "Bill Establishing a Provision for Teachers of the Christian Religion", which would have, in effect, established the Christian religion in general, was blocked largely through the efforts of James Madison and his "Memorial and Remonstrance Against Religious Assessments". Although the terms of this broad establishment bill would have put only an insignificant number of citizens in the position of contributing to a church to which they had no allegiance, it could not muster enough popular support to pass. Instead, Jefferson's "Bill for Establishing Religious Freedom", which exempted all citizens from paying religious taxes even for the support of their own church, was passed in 1786.

When one looks at this rather **diffuse** picture of the establishment practices in the period before the Bill of Rights was enacted, it is no wonder that legal scholars and historians differ widely over precisely what it was that was intended to be prohibited in the "no establishment" clause of the First Amendment. It appears that it could have meant anything from the straightforward establishment of the Massachusetts Bay Colony to the system proposed and rejected in Virginia whereby the state simply would have acted as a collector and distributor of taxes for virtually all religious denominations. Strict separationists would argue that the First Amendment prohibits all forms of establishment and all laws which respect establishment. On the other hand, those who advocate some kind of cooperation between church and state would argue that the First Amendment simply prohibits government preference of one sect over others.

On June 8, 1789, during the debate over the First Amendment, James Madison proposed the following wording:

> The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or any pretext, infringed.[1]

Had this wording been adopted it would only have prohibited the creation of a "national religion." It would not have prohibited the government's supporting more than one religious denomination, at the very least as a collector and distributor of taxes for them. The latter part of the proposed wording would seem to imply that even the states were prohibited from infringing upon "equal rights of conscience."

Wilbur Katz has argued cogently that the difficulty in the debate over the wording, however, was not simply over the question of a wider or narrower gulf between church and state.[2] The framers of the First Amendment were also very reluctant to interfere with establishments already in existence at the state level. Five of the thirteen states had constitutional establishments at the time the First Amendment was being drafted. It would appear that what the framers agreed upon was an amendment which prohibited Congress from making any law relating to religious establishments. At the same time they were careful not to interfere with the rights of the states to do so.

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[1] Annals of the Congress of the United States: First Congress, Volume I, Washington, D.C.: Gales and Seaton, 1834, p. 434.

[2] Wilbur Katz, Religion and American Constitutions, Evanston: Northwestern University Press, 1964, pp. 8-10.

The historical events relating to the "free exercise" clause of the First Amendment are essentially the same as those outlined above as relating to the "no establishment" clause. "Free exercise", while distinct from "no establishment", is hardly to be considered as unrelated to "no establishment", for wherever, and to whatever extent, religious tolerance has been assured historically, at least to that extent "free exercise" has found historical precedence. Thus, from the historical sketch above of those events leading up to the framing of the Bill of Rights, it is clear that a varied pattern of "free exercise" also existed in the colonies. If our first concern was to see the historical events leading to the drafting of the First Amendment, our second concern, then, is to see that an understanding of the First Amendment is by no means easy, nor is it a settled issue among legal scholars and historians.

One of the significant problems relating to this question concerns the use of the metaphor, "wall of separation". This metaphor was taken from Thomas Jefferson's January 1, 1802, letter to the Danbury Baptist Association, and first appeared in the Supreme Court in the opinion of Mr. Chief Justice Waite in Reynolds v. United States"[1], although in this opinion it played no role in the decision of the court. It appeared again in "Everson v. Board of Education"[1], as a basis for a decision relating to the separation of church and state. In these and subsequent uses of the metaphor Justice Black says the wall may not be breached, Justice Frankfurter admonishes that a wall is not a fine line easily overstepped, Justice Jackson fears that the wall may become as winding as Jefferson's serpentine wall at the University of Virginia and later says that it has become even more warped and twisted than he expected, and Justice Reed concludes that a rule of law should not be drawn from a figure of speech. The use of a metaphor, rather than a straightforward appeal to the wording of the First Amendment, has at least clouded the issue of the separation of church and state.

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[1] Reynolds v. United States, 98 U.S. 145 (1879).

Joseph Tussman argues that the "no establishment" and "free exercise" clauses are not as simple in meaning as would appear on the surface, and that they raise serious questions which need continued clarification.[2]

The rejection of establishment is not necessarily the rejection of religion, for it is one thing to argue "no discrimination", and quite another to insist on "no aid or cooperation". Both are aspects of "no establishment", but they seem to be alternative rather then complementary interpretations. Those who oppose all aid to religion seem to oppose favoritism or discrimination. There are, on the other hand, those who see the meaning of "no establishment" as a demand for equal treatment and do not interpret the First Amendment as a prohibition against various forms of governmental aid to, or cooperation with, the religious life of the community. They argue, rather, that we are a "religious people", and rightly or wrongly, use this phrase to further their view that it is altogether appropriate for our government sympathetically to treat the demands of religious life, to aid in furthering the spiritual demands of the people (just as it furthers material and intellectual development), provided that it does so with an even hand, without interference or control, and without coercion of nonbelievers.

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[1] Everson v. Board of Education, 330 U.S. 1 (1947).

[2] Tussman, pp. xiv-xxiv.

While everyone agrees that the First Amendment allows neither an official church nor a specially favored church, the issues go much deeper. They are concerned with the issue of aid and cooperation, on whether the government is supporting a legitimate public function when it aids, supports, or encourages religious institutions, or whether the point of the "no establishment" clause is precisely that it precludes this sort of government action.

The "wall of separation" metaphor is a helpful one in suggesting what we have believed historically in this country. It is a metaphor nonetheless, and is suggestive rather than definitive. While it thus suggests that the church and the political state are separate, it says little, if anything, about the extent of the separation, and it gives almost no help in telling us how the church and the political state may be related, or how they ought to interact. For example, we speak of "separation of powers" in our government, and this suggests at least different functions and a measure of independence, but certainly does not totally preclude all forms of cooperation and support. While I am not arguing here for aid to religion, I do point out that the use of the word "separation", or a metaphor which contains the word, does not, of itself, settle the question.

The current position, promulgated by the Supreme Court in "Everson v. Board of Education," is that neither a state nor the federal government can pass laws which aid one religion, aid all religions, or prefer one religion over another. Tussman suggests that even if we grant that aiding one religion or preferring one over another is improper, the prohibition to aiding all religions raises some serious questions which must be faced:

> 1. How does this doctrine square with the policy of tax-exemption for church property and church schools? This seems to be a form of financial aid, apparently constitutional, and, in principle, to all churches.
> 2. How significant is the distinction between aid to the individual and aid to the religious institution? Is a free lunch program or a free transportation program, extended to parochial school children, unobjectionable because it is thought of as helping children (or parents) rather than as helping the church?
> 3. If we reject this distinction as a device which undermines the "wall", do we then stand in danger of denying to citizens, because of their religious commitments, the benefits of general welfare legislation?

> 4. Apart from various forms of financial aid there are other problems of cooperation. Is "released time" for religious instruction a violation of the principle of separation? Or the adjusting of schedules for religious holidays? Or Sunday (The Sabbath) closing laws? Or censorship of blasphemy? Does "no establishment" really forbid all forms of cooperation?[1]

Besides these considerations, one often hears voiced the notion that we should keep politics out of religion and religion out of politics. On the surface this may appear to be a good rule of thumb, but it is not at all clear either that this has been the case historically, nor that it could be the case.

On the matter of keeping politics out of religion, for instance, it is perfectly clear that no one would regard it as consistent with the First Amendment for the government to make decisions for the churches on disputed doctrinal issues. On the other hand, however, the courts have been called upon to settle disputes over church property. While these decisions have dealt with property rights, they could only be settled after the court had delved into strictly theological questions of internal church control. It would hardly be relevant, for example, for the court to consider the Baptist view of local autonomy in settling property rights issues in a case dealing with the Russian Orthodox Church. The court, albeit reluctantly, must nonetheless unavoidable, deal with such issues, and pass judgment on them, even though they are inextricably wrapped up in doctrinal matters.

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[1] Ibid., p. xvi.

On the matter of keeping religion out of politics, it is not always clear that it is either possible or reasonable to do this either. There are at least three areas in which this is clear.

The first area concerns itself with the use of government to further religious ends, especially when religion actively seeks this kind of aid. The aid-to-parochial school and released-time movements are examples of this, as are the so-called "blue laws".

The second area concerns itself with the issue of the politically minded church. While many would argue against the attempt of some religious institutions either to urge the continuance of "blue laws", or to urge their establishment where they do not exist, as an outmoded form of religious zeal, they would see it as perfectly natural for the same institutions to argue for political changes which can reshape the world in ways that satisfy a religious conception of human brotherhood. May a church not condemn segregation or exploitation? Can we really divest outselves of our deepest religious and moral convictions about the shape of the good life and the good society when we enter the political arena? To make such a demand is to call for a human response which is extremely difficult, if not impossible. We can hardly prohibit religiously motivated political action in the name of the First Amendment.

The third area concerns itself with religious tests of political candidates. The constitution specifically prohibits any such religious test as a qualification to any Office or Public Trust under the United States. Nonetheless, it is the case that, at least in part, we are guided by our judgment of character in choosing public representatives and officials, and we cannot separate this judgment from what we know of the candidates' philosophy or religion. People do regard the religion of a candidate as significant, and it is difficult to see why they should not do so, particularly since no religious group is without some notion of the relationship of church and state.

While these areas of concern are not in any sense definitive, they at least show that, along with the other considerations above, the problems of the "no establishment" clause pose a number of difficulties.

The second prohibition of the First Amendment - "Congress shall make no law...prohibiting the free exercise thereof." - seems plain enough at first sight. Congress or the federal government may not interfere with the free practice of one's religion. However, unless this is some sort of gratuitous gesture, it must refer to more than what is so private or inner that government would not have the power to reach it, even if that government wished to do so. It must, therefore, when it speaks of "free exercise", refer at least in part to actions which take place in the political arena. If this is granted, the phrase which at first sight appeared to be simple enough or plain enough, appears to be far more obscure. Once it is granted that action is included in a "free exercise" of religion the question becomes, "When does the government's regulation of action constitute interference with, or the prohibition of the free exercise of religion?"

The difficulty of this question is even more apparent when the variety of religious groups and churches in the United States is taken into account. Were there an established church, clearly recognized as the instrument for defining and carrying out the free exercise of religion, the problem of what claims are legitimate religious claims could easily be worked out between the established church and the government on a cooperative basis. When, however, there are a great variety of claims, such as is the case in the United States, the government clearly has a much greater difficulty in accomodating itself to those claims.

In the light of this situation, then, it appears clear in our society that the guarantee of the free exercise of religion cannot mean that a person is free to perform any act which he judges to be required by his religious beliefs, whether or not such acts are in conflict with the general demands of social order and control. Neither can it mean that a person is free to refrain from certain acts on the purely personal grounds that he judges such acts to be in conflict with his religious beliefs.

The problems inherent in the "free exercise" clause of the First Amendment, then, must be worked out without an appeal either to the notion of a purely inner or spiritual freedom, or to the notion of the religious conscience of each individual as the supreme law of the land. Further, in working out these problems of the "free exercise" clause of the First Amendment, we are faced with four dilemmas which must be dealt with.

The first dilemma centers on the problem of freedom of belief. Beyond the obvious position that the government may not legislate some religious creed which it requires every citizen to believe, there are other issues. May the government further the force of coercion against a minority? What was the plight of the nonbeliever, for example, when we added the words "under God" to the pledge of allegiance? Were they excluded from the circle of allegiance? Did we add a religious test to membership in that circle? Or are they expected to lie? Deliberately to create a situation where some citizens must refrain from participation in a patriotic ceremony, or express a religious belief which is contrary to their inner freedom, seems to fly in the face of a commitment to, or an understanding of, the principle of freedom of religious belief.

The second dilemma centers on the problem of freedom of worship, understood generally as ceremonial. We proclaim the freedom to worship as one pleases or not to worship at all. We refrain from taxing places of worship and we do not require church attendance, all of which seems proper in guaranteeing the "free exercise of religion."

Two difficulties arise in this regard, however. First there are national ceremonies which we do not regard as religious, but which do incorporate religious dimensions repugnant to the religious beliefs of some citizens of our society. This is true in the case of Jehavah's Witnesses and the flag salute, as in the case of the Quakers and the taking of oaths.

Second, there are problems of the limits of freedom of sects in their forms of worship. Clearly the freedom of worship in the First Amendment does not protect the performance of religious rituals which would otherwise be considered criminal, e.g., snake handling, etc.

The third dilemma centers on the problem of religion and freedom of action, if we take action to be broader than merely worship. Beyond the area of belief and worship religion may require of its members that they act in a certain way. There are religious commands and prohibitions which require action, beyond ceremonial worship, which is contrary to the law of the state. The Mormons in 1879, for example, had argued:

> That it was the duty of male members of said Church, circumstances permitting, to practice polygamy....that this duty was enjoined by different books which the members of said Church believed to be of divine origin, and among others the Holy Bible, and also that the members of the Church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God,....that the failing or refusing to practice polygamy by such male members of said Church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come.[1]

This practice, which the Mormons argued was required as a religious duty, is considered for us, however, to be a secular crime. There are religious groups and individuals who regard the bearing of arms as a violation of their religious convictions. Nevertheless, military service is a legal requirement, and not all who claim conscientious objection to military service are granted such status by the selective service system.

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[1] Reynolds v. United States, 98 U.S. 145 (1879).

The further we move away from belief and worship to religiously motivated action, the less it seems that the "free exercise of religion" is taken to mean that the law can neither require action contrary to religious conviction, nor prohibit action based upon religious conviction. We are not so surprised, then, that the court prohibited polygamy among the Mormons. On the other hand, while conscientious objection has as much protection as policy-making boards are willing to grant, we have not thus far elevated this protection to a constitutional level.

The fourth dilemma centers on the problem of what may be labeled as secularism and neutrality. While the First Amendment clearly bars the government from prohibiting the free exercise of religion, nothing is implied in the clause to bar the government from acting to aid the free exercise of religion. Any limitation along this line must be found in the "no establishment" clause of the Amendment, and then only if one views the idea of separation of church and state as a prohibition of impartial aid to religion. Taken together these two clauses can be interpreted, then, as meaning either "no aid-no hindrance", or "no partiality-no hindrance." In speaking of these two views Tussman says:

> Thus is posed the fundamental issue between those who would see us as a tolerant but secular society and those who find in the conception of a secular state a denial of our history as "a religious people." The latter see the establishment clause not as a disestablishment of "religion", but only as the recognition of the legitimate diversity of religious faith and the denial of special status to any religion - not as a requirement of neutrality as between religion and irreligion but only as between one religion and another.[1]

The "no hindrance" aspect, then, is common to both interpretations of the First Amendment, and it applies equally to the religious and the nonreligious or irreligious. The government is barred from coercing the unbeliever to belief or worship, or from prohibiting the believer in his beliefs, and except in the unusual cases cited above, in his worship.

However, when one looks at the public schools, for example, the common position of "no hindrance" is much more difficult. If one argues a distinction between irreligious and nonreligious, then it can be argued that the public schools ought to be nonreligious. This would leave to the parents and the churches the issue of irreligion versus religion, while the public schools would be left free to remain neutrally nonreligious. There are those, however, who insist that a nonreligious school is, in fact, an irreligious school, and in the question of godliness versus ungodliness, is clearly on the side of ungodliness. Thus, to provide tax supported nonreligious schools would clearly be a violation of the no-hindrance position in this view.

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[1] Tussman, pp. xxii-xxiii.

Those who argue from this point of view would insist that religion cannot simply be put aside without some prejudice against it, and a tax supported school which rejects religion clearly is prejudiced against it, and thus a hindrance to it. In short, according to this claim, neutrality is not possible with reference to religion. The opponents to this claim argue that neutrality is possible on this issue in public education, thus avoiding the difficulty of the claim.

One possibility for avoiding this difficulty is an attempt to avoid religious questions. The difficulty with such attempts at avoidance, however, is that they may leave the scope of public education narrowly vocational or technical, and this is surely not conducive to attempts to educate the "whole man". On these grounds one might conceivably delete the entire Middle Ages from the study of history in the public schools. No one would seriously suggest such a curricular revision.

Another possibility for avoiding this difficulty is to establish some sort of "objectivity" within the schools that is an attempt to be fair to all. This is done by presenting the facts, or by impartially presenting each "opinion" without passing judgment on any, or by developing neutral canons of judgment whereby religious controversies can be resolved.

It may be argued, however, that these attempts are themselves philosophically based, and thus not free from partiality. If this is true, as some would argue, then such attempts surely could not be considered neutral.

The idea of a neutral, nonreligious school, then, is not altogether free from difficulties, nor is it so simple as one might suppose. It can only be promulgated when we maintain the distinction between irreligious and nonreligious. It is precisely this point which the opponents of the nonreligious school are not willing to grant. If this distinction cannot be maintained, as these opponents argue, then, on their grounds, it is no less objectionable to tax nonreligious citizens for the support of religious schools, than it is to tax religious citizens for the support of nonreligious schools.

It can be seen, then, that the separation of church and state in general is an extremely complex idea, particularly as it relates to the First Amendment, and it carries with it difficult problems not easily solved when it comes to working them out in the arena of political action.

According to Tussman there are two major problems, then, with which we are presented by the two religious clauses of the First Amendment:

> First, to what extent does the guarantee of the free exercise of religion require deference to religiously motivated action? While it seems impossible to recognize the religious conscience of each individual as the supreme law of the land the court's general denial of the constitutional status of the claims of conscientious action or objection may come

> as a surprise.
>
> Second, is the establishment clause to be understood as prohibiting all forms of aid or cooperation between churches and the state or as merely prohibiting discriminatory treatment? This question is far from settled and promises to be bitterly contested.[1]

The second problem which he raises is of fundamental importance to this paper. It sharply focuses the issue of public funds to church schools, and it is to this dimension of the law that serious attention must be given in arguing for or against such public aid to church schools.

Within recent years the schools have become a principal arena for the issue of church-state relationships, and it is in relation to a variety of school practices that the United States Supreme Court has attempted to define and interpret the relationship between government and religion.

The issue, as it relates to the schools, has two major aspects. The first involves the relationship between the state and church schools. Can the state regulate them? Should they even have the right to exist? Are they entitled to support from public taxes? The second relates to the operation of the public schools themselves. Can public schools be a setting for certain religious ceremonies? Can the schools and religious leaders cooperate in providing for programs of religious instruction? Is the study of religion a proper subject in the public schools?

The first aspect is central to the problem of this study. Eight of the court's decisions regarding the issue of separation of church and state are considered to establish the legal setting in which this problem is found. These eight decisions focus on four issues: the legitimate existence of private religious schools, public aid to religious schools, released time for religious instruction, and religious ceremonies in the public schools. While they are not all concerned with the issue of public aid to church schools, they do provide the recent historical position of the court on the broader issue of the separation of church and state. This broader outlook demonstrates the complexity of the issue as it has come before the court.

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[1] Ibid., p. xxiii.

In "Pierce v. Society of Sisters," the case centered on a law in the state of Oregon which required every parent, guardian, or other person having control or charge or custody of children between the ages of eight and sixteen to send them to the public schools. There were the usual exemptions for mental retardation, mental illness, etc. However, the law did not allow attendance at a private religious school as an exemption. The Society of Sisters, who operated a private religious school, appealed the law. Mr. Justice McReynolds delivered the opinion of the court:

> ...No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils....The inevitable practical result of enforcing the Act under consideration would be the destruction of the appellee's primary schools, and perhaps all other private primary schools for normal children within the State of Oregon....we think it entirely plain that the Act of 1922 unreasonably

> interferes with the liberty of the parents and guardians to direct the upbringing and education of children under their control.[1]

This decision established the right of private religious schools to exist in our pluralistic society.

In "Cochran v. Louisiana" and "Everson v. Board of Education," the cases centered on the issue of public aid to parochial schools. In both cases the issue relates to indirect aid to the schools and direct aid to the child. In the former case the issue centered on laws in the State of Louisiana which allowed the State Board of Education to supply school books free of cost to the school children of the State, including children who attended private, religious, sectarian and other schools not embraced in the public educational system of the State. Mr. Justice Hughes delivered the opinion of the Court:

> ...Viewing the statute as having the effect thus attributed to it, we cannot doubt that the taxing power of the State is exerted for a public purpose. The legislation does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private concern....[2]

In the latter case the issue centered on a New Jersey law which allowed the local school districts to transport all the school children in their districts to and from school. This included the transportation of children to private religious schools. The appellant argued that this law violated both the State and Federal Constitution. Mr. Justice Black delivered the opinion of the court:

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[1] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[2] Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930).

> ...The first Amendment has erected a wall between church and state. The wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.[1]

These cases upheld aid in the form of textbooks and transportation. They were decided in part on the "child benefit" theory, which holds that it is possible for the state to provide educational benefits to the children without necessarily aiding the educational institution which they attend.

In "McCollum v. Board of Education"[2] and "Zorach v. Clauson"[3] the cases centered on the issue of released time for religious instruction. The programs, however, were of a different nature and the Court ruled differently in each case. In the former case the religious instruction was carried on in the public schools by members of a religious organization. The Court ruled against this practice on the grounds that it provided public aid to private religious schools by providing them with a tax supported building for the purpose of carrying on religious instruction. In the latter case students were dismissed from school to go to their respective places of worship for religious instruction.

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[1] Everson v. Board of Education, 330 U.S. 1 (1947).

[2] Illinois ex. rel. McCollum v. Board of Education, 333 U.S. 203 (1948).

[3] Zorach v. Clauson, 343 U.S. 306 (1952).

This program was upheld as not in violation of the federal Constitution.

In "Engel v. Vitale"[1] and "Abingdon v. Schempp"[2] the cases centered on the issue of the role of religion and religious ceremony in the public school classroom. The first challenge to religious ceremony in public schools to be accepted for jurisdiction by the Supreme Court involved a special prayer recommended by the Board of Regents of New York State for use in the public schools of that state. Once that practice had been struck down in the Engel case, the stage was set for the challenge to the long-standing practice of Bible reading. This, in turn, was struck down in the Abingdon case.

In the final case, "Central School District v. Allen"[3], the court's decision involved a New York law which required school districts to lend textbooks to all school children in the district in grades seven through twelve, including those who attended private and religious schools. Although this question had been at issue in the Cochran case of 1930, this was the first case to be considered in the light of the establishment clause of the First Amendment. The court upheld the practice in the light of the neutrality test enunciated in the Schempp case of 1963, the Everson case of

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[1] *Engel* v. *Vitale*, 370 U.S. 421 (1962).

[2] *School District of Abingdon Township* v. *Schempp*, 374 U.S. 203 (1963).

[3] *Central School District* v. *Allen*, 392 U.S. 660 (1968).

1947, and most particularly the "child benefit" theory. The three dissenters in this case felt that books could be bearers of sectarian doctrine whereas buses could not.

This historic legal tradition allows us to draw the following conclusions about religion and the schools. The right of private religious schools to be established is confirmed. Public aid may be provided to parochial school children but not to parochial schools. Children may be released from school for attending religious instruction in their respective places of worship, but no religious organizations may use the public schools for purposes of religious instruction, and acts of religious worship may not be required in the public schools. The most significant decision for the purposes of this paper are those related to aid to private religious education. While the "child benefit" theory has not been accepted by the courts as grounds for direct aid to parochial schools, it is this theory to which the court has appealed in deciding in favor of aid to parochial school children.

The question of public funds to parochial schools continues to receive a great deal of attention. In addition to a great deal of literature found in the periodical literature, many books have been written concerning this question.[1] Some

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[1] The following books are representative of those dealing, either in whole or in part, with this problem:

Robert Drinan, Religion, The Courts, And Public Policy, New York: McGraw-Hill, 1963.

Alvin Johnson and Frank Yost, Separation of Church and State In The United States, Minneapolis: University of of the books deal exclusively with the problems of public funds to church schools, while others treat this as one subject among many in the complex question of the separation of church and state. Those who favor strict separation have generally argued a "no aid-no hindrance" theory, with great emphasis on the "no establishment" clause of the First Amendment. Those who oppose the strict separationists' view have generally argued a "no partiality-no hindrance" theory, with great emphasis on the "free exercise" clause of the First Amendment. Where the issue is strictly aid to parochial schools, there is the added appeal to the "child benefit" theory. Their primary significance for this study has been to provide background material and philosophical arguments for the controversy over public funds to church schools.

Minnesota Press, 1934.

John Murray, We Hold These Truths, New York: Sheed and Ward, 1960.

Dallin Oaks (ed.), The Wall Between Church and State, Chicago: University of Chicago Press, 1963.

Leo Ward, Federal Aid To Private Schools, Westminster, Maryland: The Newman Press, 1964.

CHAPTER III

LUTHERAN EDUCATION IN THE UNITED STATES AND PRE-1960 LUTHERAN VIEWS ON PUBLIC FUNDS TO CHURCH SCHOOLS

The purpose of this chapter is to trace the development of Lutheran education in the United States to the present time, and to examine briefly the position of Lutherans on public funds to church schools prior to the 1960's. It is within this educational context and against this historical backdrop that the controversy of the 1960's can best be viewed.

The Growth and Development of Schools Among Lutherans In the United States

Lutheran elementary schools have been an integral part of the development of Lutheranism in the United States since the establishment of the first Lutheran churches in the seventeenth century. By 1798 there were 139 schools, and by 1820 this number had increased to 342. By 1890 all of the Lutheran Synods in the United States reported that they had a total of 117,535 pupils in 2,132 parochial schools. Beck estimates that, including part-time schools, there were a total of 212,228 pupils in 3,353 schools.[1] By 1925 there were 96,525 pupils in 1,629 parochial schools, but by 1936 there had been a decline so that there were only 88,498 pupils in 1,456 schools.[2] Since World War II there has been a continued growth in parochial elementary schools, so that in 1963-64 there were 191,327 pupils in 1,684 Lutheran schools in the United States.[3]

Except for the academy movement around the turn of the century among Scandinavian Lutherans, secondary education did not receive much attention among Lutherans until after 1940, and then only in the Lutheran Church-Missouri Synod and the Wisconsin Evangelical Lutheran Synod.

Higher education among Lutherans in the United States can be traced back to the first half of the nineteenth century. By the turn of the century 39 of today's Lutheran colleges and junior colleges had been established. Thirteen others were established after the turn of the century. In 1902 there were 7,413 students reported as enrolled in Lutheran colleges in the United States.[4] In 1937 this figure had risen to 13,321.[1] By 1964 the enrollment in the colleges of the Lutheran Church in America alone had risen to 19,647.[2]

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[1] Walter H. Beck, Lutheran Elementary Schools in the United States, 2d ed., St. Louis: Concordia Publishing House, 1965, p. 221.

[2] Ibid., p. 302.

[3] Ibid., p. 433.

[4] Lutheran Church Almanac 1902, Philadelphia: General Council of the Evangelical Lutheran Church in North America, 1903, p. 61.

Theological education among Lutherans in the United States can be traced back to the close of the eighteenth century. By the end of the nineteenth century ten of today's Lutheran theological seminaries had been established. Five others were established after the turn of the century. In 1902 there were 954 students reported as enrolled in Lutheran theological seminaries in the United States.[3] In 1937 this figure had risen to 1,599.[4] By 1964 the enrollment in the seminaries of the Lutheran Church in America alone had risen to 1,603.[5]

The American Lutheran Church

Composed of groups from primarily German and Scandinavian backgrounds, the American Lutheran Church traces its earliest educational ventures back to the first half of the nineteenth century.

Elementary education - The earliest elementary schools among the antecedent bodies of the American Lutheran Church were begun by the Ohio Synod. By 1820 they had some 54 schools in operation.

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[1] Lutheran World Almanac 1937, New York: National Lutheran Council, 1938, p. 382.

[2] Lutheran Church in America, 1965 Yearbook, Philadelphia: Board of Publications of the Lutheran Church in America, 1964, p. 211.

[3] Lutheran Church Almanac 1902, p. 61.

[4] Lutheran World Almanac 1937, p. 378.

[5] Lutheran Church in America, 1965 Yearbook, p. 211.

The Buffalo Synod established schools along with its congregations, and placed a strong emphasis on the importance of schools at its synodical meetings.

The Scandinavians found it easy to control and to use the public schools of their communities, and thus came to look on the parochial school as a temporary agency for the Scandinavian immigrants. The earliest schools established were usually full-time. Although the number of schools reported in 1890 was upwards of 900, probably only about 100 of them were full-time. By the turn of the century full-time parochial schools were on the decline among all Scandinavians.

By the time of the 1960 merger which formed the American Lutheran Church, the Scandinavian parochial schools had practically disappeared. Thus the elementary schools of the American Lutheran Church today have their origin in the former American Lutheran Church of German origin.

Secondary education - The two academies of the American Lutheran Church have their origin in a movement which flourished around the turn of the century among the Norwegian Lutherans. There were about 40 academies at that time. Church leaders tried in vain to keep the movement from dying. Despite these efforts, after 1915 at least one institution closed almost every year.

> In other words, despite the fact that twenty-three academies were operating in 1917-1918, the death-knell had been sounded, and it was only left

for the great Depression to administer the "coup de grace." In 1937 but three schools remained.[1]

Higher education - All ten of the four-year colleges of the American Lutheran Church were established in the latter half of the nineteenth century. Six of these were founded by the Norwegians. Augustana College in Sioux Falls, South Dakota, was founded in 1860; Luther College in Decorah, Iowa, in 1861; Augsburg College in Minneapolis, Minnesota, 1874; St. Olaf College in Northfield, Minnesota, in 1874; Concordia College in Moorehead, Minnesota, in 1891; and Pacific Lutheran University in Tacoma, Washington, in 1894. Three colleges were founded by Germans. Capital University in Columbus, Ohio, had its beginnings in 1850; Wartburg College in Waverly, Iowa, in 1852; and Texas Lutheran College in Sequin, Texas, in 1891. The United Evangelical (Danish) Lutheran Church founded Dana College in Blair, Nebraska, in 1884.

Waldorf College is the only junior college of the American Lutheran Church. Located in Forest City, Iowa, it had its beginnings in 1903 as an academy of the United Norwegian Church, and began its junior college work in 1920.

Theological education - The three theological seminaries of the American Lutheran Church were founded in the nineteenth century. The Evangelical Lutheran Theological Seminary of Columbus, Ohio, is of German origin, and traces its beginning back to 1830; Wartburg Theological Seminary in Dubuque, Iowa, is also of German origin, and traces its origin back to 1854; and Luther Theological Seminary in St. Paul, Minnesota, was founded by the United Norwegian Church in 1876.

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[1] E. Clifford Nelson, The Lutheran Church Among Norwegian-Americans, Vol. II, 1890-1959, Minneapolis: Augsburg Publishing House, 1960, p. 119.

The Lutheran Church in America

Composed of groups of German, Scandinavian, Finnish, and Icelandic backgrounds, the Lutheran Church in America traces its earliest educational ventures back to the eighteenth century.

Elementary education - The establishment of a permanent day school at Trinity Church in Manhattan in 1753 marked the beginning of the oldest permanent Lutheran parochial school in the United States. While there was early interest in elementary schools within this group of Lutherans, many of these early schools never survived the Revolutionary War. Even though there was renewed interest among the German immigrants, a strong system of parochial schools in the antecedent bodies of the Lutheran Church in America never did materialize. After 1850 there was a general decline in the number of elementary schools in these groups, and by 1902 there were no elementary schools listed for any group of the churches in the General Synod.[1]

In the twentieth century a few voices have been raised for parochial schools within the Lutheran Church in America.

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[1] Lutheran Church Almanac 1902, p. 60.

The 1970 statistics would seem to indicate that there is little interest for education at this level.

Secondary education - There are no secondary schools in the Lutheran Church in America. While there were academies in the antecedent bodies of this group, especially the Scandinavians, none of them is in existence today.

Higher education - The fifteen colleges and universities and two junior colleges of the Lutheran Church in America had their origins in the nineteenth century.[1] Five of them were established by the General Synod in the first half of the century. Gettysburg College in Gettysburg, Pennsylvania, was founded in 1832; Roanoke College in Salem, Virginia, traces its origin back to 1842; Wittenburg University in Springfield, Ohio, was founded in 1845; Muhlenburg College in Allentown, Pennsylvania, in 1846; and Carthage College in Kenosha, Wisconsin, traces its origin back to 1847.

In 1856 Newberry College in Newberry, South Carolina, and Susquehanna University at Selinsgrove, Pennsylvania, were founded. In 1860 Augustana College was founded at Rock Island, Illinois. Gustavus Adolphus College in St. Peter, Minnesota, was founded in 1862. Thiel College in Greenville, Pennsylvania, was founded in 1866. Bethany College at Lindsborg, Kansas, was founded in 1881. Wagner College at Staten Island, New York, was established in 1883. Midland College in Fremont,

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[1] Two other schools have recently severed their relations with the Lutheran Church in America. Marion (junior) College in Marion, Virginia, was founded in 1873 as a school for women; and Hartwick College in Oneonta, New York, was founded in 1928.

Nebraska, was established in 1887. Lenoire Rhyne College in Hickory, North Carolina, was founded in 1891. Upsala College in East Orange, New Jersey, was established in 1893. Augustana, Gustavus Adolphus, Bethany, and Upsala Colleges were all originally affiliated with the Augustana Lutheran Church. The other schools were all affiliated with the antecedent bodies of the United Lutheran Church in America.

Both the Junior Colleges of the Lutheran Church in America were established in 1896. Grand View College in Des Moines, Iowa, was founded by Danish Lutherans, and Suomi College in Hancock, Michigan, was founded by Finnish Lutherans.

Theological education - Four of the theological seminaries of the Lutheran Church in America were founded in the nineteenth century, and three in the twentieth century.

The Lutheran Theological Seminary at Gettysburg, Pennsylvania, was founded in 1826, and is the oldest theological seminary in existence among Lutherans in the United States today.[1] The Lutheran Theological Seminary at Columbia, South Carolina, was founded in 1830. Hamma Divinity School in Springfield, Ohio, was founded in 1845. The Lutheran Theological Seminary at Philadelphia, Pennsylvania, was founded in 1867.

Northwestern Lutheran Theological Seminary in St. Paul, Minnesota, was founded in 1920. Pacific Lutheran Theological

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[1] Hartwick Seminary, founded in 1797, was the first Lutheran theological seminary in the United States, but it disbanded in 1946, leaving Gettysburg the oldest in existence.

Seminary was founded in 1952 at Berkeley, California. In 1962 the Lutheran School of Theology was founded in Chicago. It stands as the largest merger of theological seminaries among Lutherans in the United States. It drew together four other theological seminaries from churches which are all now a part of the Lutheran Church in America: Augustana Theological Seminary of Rock Island, Illinois, founded in 1860 by the Augustana Lutheran Church; Chicago Lutheran Theological Seminary at Maywood, Illinois, founded in 1891 by the United Lutheran Church in America; Grand View Lutheran Theological Seminary of Des Moines, Iowa, founded in 1896 by the American Evangelical Lutheran Church; and Suomi Lutheran Theological Seminary at Hancock, Michigan, founded in 1905 by Finnish Lutherans. In June of 1967 Central Lutheran Theological Seminary (founded by the General Synod in 1895) at Fremont, Nebraska, joined the Lutheran School of Theology.

The Lutheran Church-Missouri Synod

The Lutherans who came from Germany to St. Louis in 1838 established schools almost immediately upon their arrival, even before the official establishment of their Synod. When no teachers were available, the pastor served as teacher in their schools.

Elementary education - When the Synod was organized in 1846 it contained in its constitution specific provisions for education. From the very outset the Synod exercised constant supervision and direction of its schools. While statements in the constitution made it quite clear that congragational authority was not to be violated, the synod exercised more authority than that of a mere advisor. By any standard the parochial school system of the Missouri Synod stands as the predominant system among Lutherans in the United States. From the very outset,

> ...considering the parochial school an agency for ideal Christian training, a bulwark for the church, home, and state, a necessity to preserve true confessionalism and orthodoxy as well as to harmonize profession and practice, the Missouri Synod made its schools a matter of conscience with laity and clergy alike and thus succeeded in developing and preserving against great odds a system unique in American educational history.[1]

By 1849 there were 1,424 pupils in 49 schools, and in 1851 there were 52 schools scattered through the states of Missouri, Iowa, Michigan, Illinois, Ohio, Indiana, Maryland, Pennsylvania, New York, and Wisconsin.

Early provision was made also for teacher-training and organization of the schools, including efforts to begin a teacher training program in Fort Wayne as early as 1846. Teachers conferences were organized and an educational journal was begun as early as 1865.

By 1871, 419 congregations reported 408 schools with 26,455 pupils enrolled.

Increased immigration in the United States in the latter part of the nineteenth century brought a rapid growth of parochial schools in the Missouri Synod, which had spread as far east as the state of New York. A peak of growth was reached in 1906 with 97,138 pupils in 2,110 schools.[1] From this peak, the enrollment declined to a low, in 1943, of 68,609 pupils in 1,108 schools.[2] Since World War II, however, there has been a rapid growth in enrollment. In 1963 the Synod reported 158,050 pupils in 1,378 schools.[3]

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[1] Beck, p. 101.

Secondary education - Before 1940 there were only three high schools in the Missouri Synod (this was in addition to the preparatory departments of the synodical colleges). By 1950 there were eight schools, and by 1963 the number had reached 21. Unlike the parochial elementary schools, the high schools are usually operated by associations which support and govern these schools on a community-wide basis.

Higher education - There has been a carefully developed program of higher education in the Missouri Synod. Three of its schools are teachers colleges. Concordia Teachers College in River Forest, Illinois, traces its origin back to 1847; Concordia College in St. Paul, Minnesota, traces its origin back to 1893; and Concordia Teachers College in Seward, Nebraska, was established in 1894.

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[1] Lutheran Church Almanac 1906, Philadelphia: General Council of the Evangelical Lutheran Church in North America, 1907, p. 61.

[2] The Lutheran Church-Missouri Synod, 1965 Lutheran Annual, St. Louis: Concordia Publishing House, 1964, p. 57.

[3] Ibid.

Nine of the Synod's schools are junior colleges[1] whose primary purpose is the preparation of men for the theological seminaries and teachers for the parochial schools of the Synod. Concordia College in Milwaukee, Wisconsin, and Concordia Collegiate Institute in Bronxville, New York, were both established in 1881; St. Paul's College in Concordia, Missouri, was established in 1884; St. John's College in Winfield, Kansas, was established in 1893; Concordia College in Portland, Oregon, was established in 1905; California Concordia College in Oakland, California, was established in 1906; Alabama Lutheran Academy and College in Selma, Alabama, traces its origin to 1922; Concordia Lutheran College of Texas in Austin, Texas, was established in 1926; and Concordia Lutheran College in Ann Arbor, Michigan, was established in 1963.[2]

Concordia Senior College was established in Fort Wayne, Indiana, in 1957, as the first and only senior college of the Synod.

Valparaiso University at Valparaiso, Indiana, traces its origin back to 1859. Since 1925 it has been run by an independent corporation composed of men and women who were members of churches in the Evangelical Lutheran Synodical Conference. Since the Missouri Synod was the last remaining member of that conference, it is fair to say that this university is closely related to the Missouri Synod, although not directly under its control.

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[1] Two other junior colleges of the Synod are no longer in existence. Concordia College at Fort Wayne, Indiana, was founded in 1846, and Concordia College of Conover, North Carolina, was founded in 1881.

[2] Junior college graduates preparing for the ministry go to Concordia Senior College for their last two years of college before going to one of the Missouri Synod seminaries. (The Springfield Seminary also accepts graduates of other accredited colleges.) Junior college graduates preparing for a teaching career in the Missouri Synod parochial schools usually go to one of the three teachers colleges of the Synod for their last two years of college.

Theological education - Concordia Seminary at St. Louis, Missouri, claims 1839 as its founding date, and Concordia Theological Seminary of Springfield, Illinois, traces its history back to 1846.

The Wisconsin Evangelical Lutheran Synod

Comprised of groups of German origin, the Wisconsin Evangelical Lutheran Synod traces its earliest educational ventures back to the middle of the nineteenth century.

Elementary education - By 1861 there were 51 elementary schools within this group, mostly in the larger towns and cities in southeastern Wisconsin. There was no vigorous policy concerning education during the early days of this Synod, and emphasis on the need for theological and college training began by 1860 to pull the emphasis away from the parochial schools. Nevertheless, by 1892 the Synod reported 11,947 pupils in 233 schools.[1] This growth was due, in large measure, to the increased immigration between 1865 and 1890.

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[1] Beck, p. 202.

While there has been growth among the elementary schools in this Synod during the twentieth century, this growth has been greatly overshadowed by the much larger growth in the Missouri Synod. Today the parochial elementary school is an important part of the Wisconsin Synod.

Secondary education - High schools have been a recent development in the Wisconsin Synod. From 1953 to 1963 seven high schools were established, bringing their total up to eight. As in the Missouri Synod, these high schools are operated by associations which support and govern the schools on a community-wide basis.

Higher education - Two colleges were developed in the nineteenth century and one junior college was developed in the twentieth. Northwestern College at Watertown, Wisconsin, was established in 1865, and Dr. Martin Luther College (a teachers' college) was established in 1884 in New Ulm, Minnesota. Wisconsin Lutheran College (junior college) at Milwaukee, Wisconsin, was established in 1959 to provide the first two years of teacher education. Its graduates normally complete their work at Dr. Martin Luther College.

Theological education - Wisconsin Lutheran Seminary at Mequon, Wisconsin, was organized in 1865.

Lutheran Views On Public Funds To Church Schools Prior To 1960

Church and State in Lutheran Theology

It is of fundamental importance to this study to point out that the question of public funds to church schools is only one of several issues under the more general topic of the relationship of church and state. For Lutherans the more general question of the relationship of church and state is historically rooted in Lutheran theology, especially the Unaltered Augsburg Confession. Presented to Emperor Charles V on June 25, 1530, at the Diet of Augsburg, this statement set forth in 28 articles what the Protestants believed. It was written by Philip Melanchthon, and had the approval of the Protestant leaders of Germany, including Martin Luther. In the 440 years which have followed, it has stood as the chief confessional statement of Lutherans throughout the world. Articles XVI and XXVIII both address themselves to the general issue of the relationship of church and state. Article XVI reads, in part:

> Concerning civil affairs, they teach that such civil ordinances are lawful, are good works of God; that Christians may lawfully bear civil office, sit in judgments, determine matters by the imperial laws, and other laws in present force, appoint just punishments, engage in just war, act as soldiers, make legal bargains and contracts, hold property, take an oath when the magistrates require it, marry a wife, or be given in marriage....it...requireth especially the maintenance thereof, as of God's own ordinances....Christians, therefore, must necessarily obey their magistrates and laws, save

> only then, when they command any sin; for then they must rather obey God than men. Acts 5:29[1]

This article makes it clear that Lutheran theology sees civil government as ordained of God. It encourages participation in that government and requires obedience to it, except in situations where the government would require the Christian to violate the teachings of Scripture. Also contained in the article, but not quoted above, is the condemnation of those who, on the one hand, forbid participation in government, as well as those who, on the other hand, flee the responsibility.

Article XXVIII reads in part:

> Wherefore the Ecclesiastical and civil powers are not to be confounded. The Ecclesiastical power hath its own commandment to preach the Gospel, and administer the Sacraments. Let it not by force enter into the office of another; let it not transfer worldly kingdoms; let it not abrogate the magistrates' laws; let it not withdraw from them lawful obedience; let it not hinder judgments touching any civil ordinances or contracts; let it not prescribe laws to the magistrates, touching the form of the republic.... If so be that the bishops have any power of the sword, they have it not as bishops by the commandment of the Gospel, but by man's law given unto them of kings and emperors, for the civil government of their goods. This, however, is a kind of function diverse from the ministry of the Gospel....[2]

While the above quotation represents only a small portion of the very extensive Article XXVIII of the Augsburg Confession, it makes it clear that, contrary to both the Roman and the Reformed positions of that day, the Lutherans held to a separation of church and state, each considered as ordained of God, and each one with its own jurisdiction and powers. These are the confessional expression of the Lutheran concept of the two kingdoms, or the two spheres of Law and Gospel. Klotsche maintains that "The Lutheran Confessions stand for the complete separation of church and state."[1] While this may be an overstatement, inasmuch as a phrase such as "complete separation" may seem to imply no relationship whatsoever, it is an accurate generalization of the Lutheran position so far as the Confessional statements are concerned. In another place Klotsche points out that Luther may have been a bit ambiguous in his personal views of the relationship of church and state, particularly since Luther maintained that "the prince should tolerate in his realm only the One Church of the pure Word."[2] While this assessment of Luther is no doubt accurate, it is still clear that, as far as the historic theological statements of Lutheranism are concerned, they are committed to the separation of church and state.

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[1] John E. Whitteker (translator), The Unaltered Augsburg Confession, Reading, Pennsylvania: Pilger Publishing House, 1888, p. 59.

[2] Ibid., pp. 102-103.

If the issue of public funds to church schools is a sub-issue, falling under the broader question of church-state relationships, then this sub-issue must be considered under the general principles which govern decision-making in the broader sphere of church-state relationships. One such guiding principle is the basic theological nature of the issue. While this may not be inherently a theological issue, it is nonetheless a theological issue from a Lutheran point of view, inasmuch as the relationship of church and state is clearly a part of the confessional statements of the Lutheran Church. The issue of public funds to church schools does, then, qualify as a theological issue among Lutherans.

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[1] E.H. Klotsche and J. Theodore Mueller, The History of Christian Doctrine, Burlington, Iowa: The Lutheran Literary Board, 1945, p. 199.

[2] Ibid., p. 187.

In the development of the theological position of separation of church and state, Lutherans have had a history of inconsistencies. Neve deals with this problem and points out that:

> It is surely a strange appearance that with this stress upon the separation of church and state the Lutheran Churches in homelands (Germany, Sweden, Denmark, Norway, Finland) have had their existance as state churches - with so close a relation between the two in Germany that when in 1918, after the close of the World War and after the revolution, the time came for a reconstruction, there was generally among the laymen as well as the clergy a very deep aversion against the idea of a church separated from the state and governed by synods.[1]

In a contemporary article, Huffman also deals with this problem and points out that:

> ...when one visits Lutheran churches in Europe, it is apparent that they have no desire in many Lutheran lands for the rigid type of separation which we Americans claim....(In Copenhagen) the politically appointed minister of religion has actual decision-making powers over the church buildings and properties....A Swedish clergyman...says: "The historic

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[1] J.L. Neve, Church and Sects of Christendom, Blair, Nebraska: Lutheran Publishing House, 1952, p. 159.

> American tradition is a separation of church and state. The Swedish tradition is a union."[1]

What factors historically have contributed to this seemingly glaring inconsistency between Lutheran theology and Lutheran practice is beyond the scope of this study. Two points are important, however, to the background of Lutheran views on public funds to church schools. As already mentioned above, the historical position of Lutherans is a position of separation of church and state. The second point is that, despite the inconsistency of the majority of Lutheran movements in Europe, the American tradition of Lutheranism has been one which has followed a tradition of a fairly strong position on separation of church and state in its understanding of the historic confessional statements of Lutheranism.

The Lutheran Position In the United States Prior to the 1960's

Despite the inconsistencies among Lutherans in Europe with the establishment of state churches, the belief and practice among Lutherans in the United States was quite consistently one of separation of church and state prior to the 1960's. At least two factors contributed to this practice. In the first place it often was the case that the church in the Old World demonstrated very little interest in the affairs of the church in the New World. Many early pastors, trained in Europe, saw their pastorates in the colonies as a stepping stone to a better position in Europe and did not stay for long in this country. In the second place, many of the Lutheran immigrants came, at least in part, dissatisfied with the church of the Old World and determined to build a new church in this country. The Norwegians, for example, often stressed piety as over against the cold "high church" atmosphere of the church in Norway. The Missouri Synod and other Lutherans showed from the very outset a determination to develop educational programs for their own clergy. As in the development of any historical movement, any theological position, any politico-philosophical position, the factors which contributed to their development are many and varied, and the actual causal relationships are difficult, if not impossible, to isolate and identify. Thus it was with the development of Lutheranism in the United States. It is nonetheless, accurate to describe the development of practice and theology among Lutherans in the United States as a position committed quite consistently to the separation of church and state, with a corrallary commitment to voluntarism in the matter of church membership and affiliation.

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[1] Gordon S. Huffman, "Areas of Church-State Tensions", in How Complex Are Our Issues, Minneapolis: Augsburg Publishing House, 1964, pp. 14-15.

Another important factor in understanding the position of Lutherans on any issue in the United States has to do with their view of church polity. Unlike the Reformed Church, Lutherans are not held together primarily by a commitment to a certain kind of ecclesiastical order among its congregations. At heart the Lutheran Church is a confessional church with its primary commitment to its historic confessions, most important of which are Luther's Small Catechism and the Unaltered Augsburg Confession. The relationship of local congregations through synods and districts is more of a practical matter than a theological one, and takes second place to the confessional nature of the church. Lutherans are committed to the primacy of the local congregation in matters of church government, and the synodical organization stands as a convenient way for the church to work together. Thus it is difficult even to say, with reference to a particular social or theological position, that the Lutheran Church (as a nationwide organization) speaks for all Lutherans in the United States. The Board for Christian Social Action of the former American Lutheran Church made this point very clear in the foreword to its 1960 statements on Christian social living:

> The Board for Christian Social Action of course could not and would not think of trying to tell members of the American Lutheran Church what they must think and how they should act on these issues. It can and should, however, seek to point out Christian principles and viewpoints which it believes a sincere Christian ought to take into account in his own evaluation of the issues and in deciding his own course of action.[1]

Since, however, the four groups under consideration in this paper are corporate structures, it is possible to speak of an official position of each of these groups as found in the minutes of their official conventions, and to speak of the position of Lutherans in general as found in the writings of various Lutheran organizations. It is also possible to speak of the general practice of Lutherans in the United States.

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[1] American Lutheran Church, The Christian In His Social Living, Minneapolis: Board for Christian Social Action of the American Lutheran Church, Augsburg Publishing House, 1960, p. 3.

Prior to the 1960's the Lutheran position in the United States was virtually unanimous in its agreement with most Protestant groups in the United States. Lutherans were against public funds to church schools.

There have, of course, been exceptions to this general position among Lutherans. Two of them are exemplary in this regard. The first is recounted by Jahsmann in dealing with problems in church-state relations among Lutherans. In 1911 a plan for the solution of the school and school tax question was placed before the Manhattan Lutheran Pastoral Conference by Pastor William Schoenfeld, and then published for discussion in other pastor and teachers' conferences. Schoenfeld was concerned about the need for religious instruction in the public schools of America, but at the same time he was worried lest such instruction not be the truly Biblical and Christian religion. He was also afraid that the teaching of religion in the public schools would violate the principle of separation of church and state and that parochial schools would suffer. He saw the spread of Lutheran parochial schools as the answer to Lutherans to this dilemma. He also saw the problem of financial support for these parochial schools as a crucial and difficult one. Arguing on the grounds that education was the primary responsibility of the parents rather than the state, Schoenfeld suggested that the state turn this responsibility back to the parents, and only establish state schools in those areas where parents did not fulfill their responsibility of establishing schools for their children. In order to expedite this plan, there would be a single school tax levied which would be paid directly to the institution of the parents' choice by the parent. Where the school tax was not paid, it would fall due to the state.[1]

The second example comes from the development of Gettysburg College in Pennsylvania. Gettysburg College had its genesis in the Gymnasium which was developed in the Lutheran Seminary at Gettysburg by Professor Samuel Simon Schmucker. Schmucker wanted to enlarge the Gymnasium to a college and separate it from the seminary, and set out to get a charter from the state for this purpose. The charter was granted, and according to Wentz:

> Two years later, by the aid of Thaddeus Stevens, a citizen of Gettysburg and at that time a member of the State legislature, Dr. Schmucker was able to secure from the State a grant of $18,000 for the College.[2]

The plan in the first of these examples was not adopted and may have been a very impractical plan. Nonetheless, it does represent a point of view among Lutherans expressed at a time when the issue was of seemingly a great deal less importance among Protestants in the United States. The second example shows that the separation of church and state issue was not clear cut, either among such strong advocates of public education as Thaddeus Stevens or among Lutherans in the United States, particularly on matters pertaining to higher education. There are other examples among Lutherans in the United States. Jahsmann, for example, points out the unpublished essay of Martin P. Simon in which Simon disagrees with the Supreme Court in its decision in the McCollum case, on the grounds that it violates "the freedom of religious education."[1]

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[1] Allan Hart Jahsmann, What's Lutheran In Education?, St. Louis: Concordia Publishing House, 1960, p. 151.

[2] Abdel Ross Wentz, History of the Gettysburg Theological Seminary, Philadelphia: The United Lutheran Publication House, 1927, p. 144.

Walter Beck summarized the view of Lutherans toward the end of the 1930's and indicated that they stood strongly for separation of church and state at that time:

> While the question of public support has in recent years loomed up as one of the major issues in the parochial-school question, it was never an issue in regard to Lutheran schools. On this question the position of Lutheran bodies has been essentially the same as in regard to that of religion in the public school, namely, that the principle of the separation of Church and State had to be consistently maintained.[2]

To support this generalization of the view of Lutheran bodies in this regard Beck made the following observation about their response to the recommendation of a presidential advisory committee:

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[1] Jahsmann, p. 151.

[2] Beck, pp. 350-351.

> ...President Roosevelt's Advisory Committee on Education recommended late in 1937 "that the States be permitted to use Federal aid funds for the benefit of private and parochial schools, for the purchase of textbooks and reading-materials, for the transportation of pupils, for health and welfare services, and for scholarships (direct aid) for pupils sixteen to nineteen years old."...There is no record, however, that any Lutheran body or individual school made any requests for such aid or supported any such measure.[1]

Among the Missouri Synod Lutherans a very consistent position seems to have been held prior to the 1960's. In convention in 1941 this Synod instructed its Board of Parish Education to study the question of Government aid to churches in the field of education. On the basis of an 18-page committee report an extensive policy was formulated by the Board of Parish Education and accepted by the Missouri Synod in regular convention in 1944. Two introductory paragraphs were significant:

> We recognize that some services of the State are essential to the nature of the State, without which the State cannot be said to exist (e.g., under the constitution of the United States, protection of life, liberty, and the pursuit of happiness). These can be demanded of the State by all citizens and therefore also by the church.
>
> Other services rendered by the State are adventitious: the State could refrain from providing them without neglecting its fundamental duties or ceasing to exist. Chief of these is education, which in the nature of things and in divine ordinance is a parental function although the State has an interest in the education of its citizens.[2]

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[1] Ibid., pp. 351-352.

[2] Lutheran Church-Missouri Synod, Proceedings of the Thirty-Ninth Regular Convention, St. Louis: Concordia Publishing House, 1944. pp. 131-134.

The statement went on to distinguish between the social service program and the teaching program of the schools, and indicated that there was a vital difference between these two programs. Social service had to do with the library service, lunches, health service, transportation, etc. The teaching program had to do with curriculum, teaching, and philosophy of education. With reference to the former, the policy statement read:

> The social service program should in equity be available to all children of school age irrespective of their school association just as in the case of public library service. The State can grant this program to children in church schools, since rendering this service does not promote the religious tenets of the Church.[1]

With reference to the teaching program of the schools the policy statement took the opposite view:

> The Church ought not ask the State for a subsidy for the teaching program of its schools.... Because it is most unwise for the Church to accept such subsidy for its teaching program, even though the right to control has been waived by the State, we as citizens should not agitate for the State support but oppose the granting of State funds for sectarian use.[2]

In later conventions of the Missouri Synod this basic position was reaffirmed in 1947, 1950, and 1953. The statement of the 1953 convention read, in part:

> ...the social service programs of the State should in equity be available to all children of school age, irrespective of their school association.... We are opposed to the granting of State or Federal

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[1] Ibid.

[2] Ibid.

funds for the support of church schools.[1]

The last statement was directed, as in 1944, specifically toward the granting of State or federal funds to subsidize the teaching program of the schools.

Another example of the developing view of Lutherans prior to the 1960's comes from the former American Lutheran Church of the 1930 merger. In 1954 this group published a statement in its official periodical which was presented to its delegates in convention that year for their consideration. The statement read, in part:

> Funds raised through taxation...should in no way be used to support or assist the educational program of the church, its institutions, or agencies. A church school may, however, receive such State benefits accruing solely to the advantage of the individual pupil as he would receive were he to attend a public school...Free transportation in a school bus is so debatable as to whether it is a child benefit or an essential educational service that the church school would wisely neither seek nor accept transportation of its pupils in public-school buses.[2]

Between 1954 and 1958 no comments or suggested revisions were received on the above statement from pastors or individuals within the Church. Outside this church body the statement was received with favorable comment by other Lutherans. This was particularly true among the other members of the American Lutheran Conference.[1]

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[1] Lutheran Church-Missouri Synod, Proceedings of the Forty-Second Regular Convention, St. Louis: Concordia Publishing House, 1953, p. 336.

[2] "The Christian And His Public Schools," Lutheran Standard, Vol. 112 (August 28, 1954), p. 10.

The Board for Christian Social Action brought the proposed statement back to the 1958 convention for adoption. At this time it was adopted, but the transportation sentence was deleted.[2]

While there was evidence of a rather consistent position of separation of church and state in these actions of the American Lutheran Church, there was, at least, an indication of a slight shift in position in the deletion of the sentence regarding free bus transportation, a shift which seemed to indicate a more liberal stance in the latter part of the 1950's than had been held earlier in the same decade.

The above examples have been taken from only the Lutheran Church-Missouri Synod and the former American Lutheran Church. They are, however, representative of the general position held prior to 1960 by the four groups under consideration in this study.

One inter-Lutheran organization also provided an example of the Lutheran position prior to, and at the outset of, the 1960's.

The National Lutheran Educational Conference was formed in 1919 at Harrisburg, Pennsylvania "to provide an agency through which the forces of Lutheran higher education in America may be mutually helpful."[1] It has been a cooperative agency among Lutherans in the United States, and has developed special resolutions over the years which represent the viewpoint of Lutherans on higher education. One of its most significant resolutions was passed in 1958, addressing itself to federal aid to students:

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[1] A loosely-knit organization composed of all the antecedent bodies of the present American Lutheran Church, plus the former Augustana (Swedish) Lutheran Church.

[2] "Church-State Relations In Education Studies," Lutheran Standard, Vol. 116 (November 9, 1958), p. 9.

> It is recognized that our country and the world face a future in which the need for higher education will be such as to call for the largest possible measure of support from all sources and the most thoughtful and efficient use of all resources that become available, and it is further recognized that the critical importance of higher education to our national welfare is likely to put the resources of the Federal government behind the program of higher education in ways and to degrees only partly determined at this time.
>
> We, therefore, urge the following considerations....
>
> 1) It is to the best interest of all education that any program of Federal support permit and encourage the full and free operation and development of the dual system of education, public and private, as it has developed in our country.
>
> 2) The support of education by grants to individual students permits a broader support of American higher education than is the case when such support consists of subsidies to institutions...[2]

The exact intent of this resolution is difficult to ascertain. It does seem, however, to represent a position even more liberal than that among Lutherans regarding parochial schools. While the statement advocates support to individuals rather than institutions, it is not clear if this is an attempt to protect Lutherans from violating the principle of separation of church and state, or if it is an attempt to keep the pending legislation from going in a direction which would seriously hamper the future development of Lutheran higher education because it would no longer be able to compete with the public institutions which would receive large benefits from direct grants. The historic position of Lutheranism in the United States may favor the former interpretation.

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[1] Gould Wickey, Lutheran Cooperation Through Lutheran Higher Education, Washington, D.C.: Lutheran Education Conference of North America, 1967, p. 1.

[2] Ibid., p. 96.

At the beginning of the 1960's Lutherans in the United States were still, for the most part, quite committed to the position of separation of church and state, and in practice and pronouncements, this position was quite consistently held on the position of public funds to church schools. In general there was agreement that some aid to students was acceptable, but aid to institutions, especially at the parochial school level, was not acceptable.

CHAPTER IV

THE CONTROVERSY AMONG LUTHERANS IN THE UNITED STATES DURING THE 1960'S

The single most significant study by Lutherans in the United States on the issue of public funds to church schools took place in the Social Trends Committee of the National Lutheran Council during the years 1960, 1961, and 1962, culminating in the submission of a recommended policy statement to the Executive Committee of the National Lutheran Council at its November 13-15, 1962, meeting.

The significance of this statement, although never recommended to the churches as an official policy statement, was that the committee responsible for its drafting was composed of a variety of men from both the American Lutheran Church and the church bodies which were to become the Lutheran Church in America. In addition to this membership, the committee communicated with other Lutheran bodies as well as other Protestant groups during their study of this issue. The responses of the various Lutheran leaders to the work of the committee showed the intensity of the study and the shades of differences involved in the various drafts of the document which was finally formulated.

Other sources were also important which showed the actual resolutions passed by the four Lutheran groups during the 1960's. There were also the meetings of the various Lutheran groups such as the Association of Lutheran College Faculties and the Inter-Lutheran Consultation on Church and State Relations. The study of the broader issue of church and state in the United States under the auspices of the United Lutheran Church in America (continued under the Lutheran Church in America) was another important development in this area during the early 1960's. All of these sources, along with the official pronouncements of the Lutheran Church bodies, showed the developing position of the Lutherans in the United States on the issue of public funds to church schools.

The National Lutheran Council And Its Committee On Social Trends

In 1957 the Social Trends Committee was established as a standing committee of the National Lutheran Council. Four of its regular members were from the Churches which were to become the American Lutheran Church. From the Evangelical Lutheran Church there was Howard Hong, Professor of Philosophy at St. Olaf College (during the 1959-1960 school year he was replaced by E. Clifford Nelson, Professor of Church History at Luther Theological Seminary); and Warren A. Quanbeck, Professor of Systematic Theology at Luther Theological Seminary. From the former American Lutheran Church there was Carl Reuss, Professor of Sociology and Dean of the faculty at Wartburg College (later Director of the Commission on Research and Social Action of the American Lutheran Church). From the Lutheran Free Church there was Benjamin Gjenvick, Executive Director of the Wisconsin Lutheran Welfare.

The other five regular members were from the Churches which were to become the Lutheran Church in America. From the United Lutheran Church in America there was George Forell, Professor of Systematic Theology at Chicago Lutheran Theological Seminary; Harold Letts, Executive Director of the Board of Social Action of the United Lutheran Church (replaced after 1960 by Rufus Cornelsen, Assistant Executive Director of the Board of Social Action); and Harold Haas who succeeded Harold Letts as the Executive Director of the Board of Social Action. From the Augustana Lutheran Church there was A.D. Mattson, Professor of Christian Ethics at Augustana Theological Seminary. From the American Evangelical Lutheran Church there was Arild C. Olsen, an executive in the National Council of Churches.

The advisory staff of the committee was composed of the Executive Secretary of the National Lutheran Council, Paul C. Empie, and his assistant, as well as the heads of the various departments of the National Lutheran Council: Lutheran American Work, American Missions, Public Relations, Military Chaplaincy, Welfare, and College and University work. Three of the advisory staff members were members of the United Lutheran Church in America, two were members of the Augustana Lutheran Church, two were members of the Evangelical Lutheran

Church.

Several things were evident from the membership of the committee. First, it was clear that the committee was a clergy dominated committee (only Hong and Reuss were not clergymen), even though none of them were involved in the parish ministry during the time of their work on the committee. Second, the membership represented a broad spectrum of Lutheran groups which were to come together eventually into two large Lutheran bodies, the American Lutheran Church and the Lutheran Church in America. Third, the committee was composed of men involved in a wide variety of church vocations, both inside and outside the Lutheran Church.

The consideration of the issue of public funds to nonpublic schools by the committee grew out of the broader question of church-state relations in the United States. As early as the June 30-July 2, 1958 meeting of the committee the question of church-state relations in welfare services appeared in the agenda of the Social Trends Committee.[1] At the December 18-19, 1958 meeting of the committee a discussion of church-state relations in welfare matters was "continued on the agenda for future meetings."[2] At the June, 1959 meeting, two items were on the agenda, bringing together the question of public funds for nonpublic schools and public funds for church hospitals. President Fredrik Schiotz of the Evangelical Lutheran Church requested of Paul Empie that the National Lutheran Council give two matters some study, hopefully to arrive at a common Lutheran answer on questions which related to the separation of church and state:

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[1] Agenda of the Social Trends Committee, June 30-July 2, 1958 (American Lutheran Church files, Minneapolis), p. 4.

[2] Minutes of the Social Trends Committee, December 18-19, 1958 (American Lutheran Church files, Minneapolis), p. 11.

> At the annual meeting of our Church Council, the question was raised whether the principle of separation of church and state is violated in two practices that are now well-nigh common:
> 1) The acceptance of Hill-Burton funds and the use of Federal loan funds for the erection of college dormitories;
> 2) The inclusion of courses in religion in the curricula of state schools.
> Pastors and institutions of the Evangelical Lutheran Church are violating the principle of separation of church and state if these two instances cited above are violations. Some contend they are. This moved the Church Council to request the National Lutheran Council to give this matter some study in the hope that Lutherans might have a common answer to questions concerning the separation of church and state.[1]

Empie suggested that the matter be referred to the Social Trends Committee and Schiotz concurred. Thus at the June, 1959 meeting the question of the use of federal funds by religious groups in higher education was placed on the agenda for future consideration, but no assignment was made.[2] Subsequently, the question of Hill-Burton funds was taken from the Welfare Committee and placed on the agenda of the December 17, 1959 meeting of the Social Trends Committee, in keeping with the request of the Executive Committee of the National Lutheran Council.[1] In its annual report to the National Lutheran Council, the Social Trends Committee indicated that church-state relations in welfare matters had been removed from its list of agenda items since the topic was being studied by the Division of Welfare.[2]

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[1] Agenda of the Social Trends Committee, June 30-July 2, 1958, p. 4.

[2] Minutes of the Social Trends Committee, June 29-30, 1959, p. 5.

It is clear from a reading of the report of the 1960 annual meeting of the National Lutheran Council that the issue of church-state relations was one of fundamental concern to the Council. In his annual report as executive director, for example, Paul Empie stated:

> When one views in restrospect the activities of the past year, it is astonishing to note at how many points the Council's concerns require greater clarification on church-state relationships. Two of the petitions transmitted to the Council in this report are directed toward this area. Many of the studies of the Committee on Social Trends involve this basic issue. A major study undertaken by Lutheran World Relief deals with it in a very practical way, the outcome of which will affect the type and scope of its program. The Joint Seminar on the Church and National Life sponsored together with the Lutheran Church-Missouri Synod centered on this point. Problems encountered in the work of the Bureau of Service to Military Personnel are connected with it. The Welfare Division grapples with it in many of its studies.[3]

The question of Hill-Burton funds for hospitals and the teaching of courses in religion in state schools, which had come to Paul Empie from the Evangelical Lutheran Church via President Schiotz, was formally brought to the floor of the annual meeting of the National Lutheran Council and it was voted that it be "referred to the Committee on Social Trends for study and report back to the Council."[1]

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[1] Agenda of the Social Trends Committee, December 17-19, 1959, pp. 3-4.

[2] Annual Report of the Social Trends Committee, February 2, 1960 (American Lutheran Church files, Minneapolis), p. 46.

[3] National Lutheran Council, Annual Reports and Minutes, New York: Office of the Executive Secretary of the National Lutheran Council, February 2-5, 1960, Reports, p. 58.

The explicit question of federal aid to education was also brought before the entire council from the resolutions committee and the following resolution was adopted February 5:

> RESOLVED: That the National Lutheran Council views with concern the proposal made in connection with legislation currently before the Congress which would authorize loans to non-public elementary and secondary schools for the construction of school buildings, on the basis that:
> a) Such government aid previously given to colleges and universities operated by religious groups has been considered by many as a borderline practice in proper relations between church and state, but government aid for the construction of church-operated schools at the elementary and secondary level is clearly a form of tax support for sectarian instruction; and
> b) The availability of such aid to non-public schools would facilitate with public funds the establishment of racially segregated private schools as an alternative to integration in the public schools.[2]

In commenting on this resolution, Robert E. Van Deusen, Washington Secretary for the Public Relations Division of the National Lutheran Council, indicated that in the bill on federal aid before the Congress at that time amendments permitting federal aid to private elementary and secondary schools had been defeated, but would likely come up again in the future.

At its April 13-14, 1960 meeting the Social Trends Committee placed on its agenda both the issue of Hill-Burton Funds and federal aid to education.[1] By the end of its meeting the committee had prepared a statement on Hill-Burton Funds to be circulated among its members for their criticisms and suggestions. Two matters in the minutes of the committee give some idea of the problems which were seen in the issue of church-state relations. Both of these matters related to the question of Hill-Burton funds for hospitals, authorized by Congress in the 1946 Hill-Burton Act. The first matter related to the extensive discussion which centered around this question, and the second matter involved written attachments to the minutes which had been prepared for the discussion of Hill-Burton funds.

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[1] Ibid., Minutes, p. 15.

[2] Ibid., p. 50.

The discussion of Hill-Burton funds took up the entire afternoon session of Wednesday, April 13, from 2:15 until 5:00, and was continued again at the morning session of the following day.[2] The Wednesday afternoon session centered around a statement by Professor Warren Quanbeck, one of the two theologians of the group (the other was Professor George Forell), on the church-state issue and its relation to Hill-Burton funds. In summarizing the Wednesday afternoon discussion, the secretary noted:

> There followed an extended period of discussion on the whole field of Church-State relationships in which the following observations, among many others,

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[1] Agenda of the Social Trends Committee, April 13-14, 1960, pp. 2-3.

[2] Minutes of the Social Trends Committee, April 13-14, 1960, pp. 5-6.

> were voiced:
> a) That the radical changes in the social and political structure of our nation, as over against that of the Reformation Periods, make it exceedingly difficult to relate Luther's thought and writings to the present day scend;
> b) that the distinction between Church and State as separate orders of creation tends to become confused when both Church and State serve the common welfare;
> c) that both Church and State have a proper role to play in serving the common good, but that the state exceeds its proper function when it tries to serve man and demands worship and surrender, and likewise, that the Church exceeds its proper function in our nation if and when it tries to make the State an instrument of propagating the Christian Gospel;
> d) that in the case of Hill-Burton Funds, it is possible and probable that public funds are being used to support institutions which, in effect, carry out a denominational witness;
> e) that institutions receiving subsidy in any form from public funds and rendering, therefore, services to the public, should not be permitted to insist on rules or practices growing out of their particular religious or ethical positions when such rules or practices are not in general agreement with those of other religious groups;
> f) that the term "separation" of Church and State is in a sense a misnomer, since there is a manifest community of interest between Church and State which is proper and constructive so long as each group maintains its independence;
> g) and that even in cases where Church and State cooperate in programs which hopefully fulfill the proper function of the State, and, at the same time, a proper function and role of the Church, it is difficult to determine whether, in fact, the best interests of the Church through the Gospel or the best interests of the State are served thereby.
>
> After further discussion, the Committee arrived at a tentative conclusion favoring the approval of use under certain stipulations of Hill-Burton Funds by church organizations.[1]

The issue was again taken up the next day when consideration was given to a draft statement prepared by Paul Empie. Suggestions were made for modifications and changes in this paper, and Empie subsequently revised the paper, a copy of which was attached to the minutes of the April, 1960 meeting of the Social Trends Committee.

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[1] Ibid.

The summary of the report of Quanbeck to the committee, as well as the statement by Empie, make it clear that, from a theological viewpoint, the committee saw no clear-cut Lutheran answer to the problem of Church-State relations. The thrust of Quanbeck's report, for example, dealt with Luther's view of Law and Gospel, which maintains that there is no realm of life which is not subject to God as Lord:

> God's sovereignty finds expression in more than one way in human life. In Christ it is expressed as love, freely giving itself for mankind in the offering on the Cross. This is the grace of God made known in the Gospel.
>
> In the world of nations, of nature and human society God's sovereignty is manifest through the law. This means that God works in hidden ways for the accomplishment of his purpose, and that there is no realm not accessible to his working. Lutheran theology has customarily expressed this in the doctrine of the two kingdoms. In the kingdom of grace, the kingdom on the right hand, God reveals himself in love to sinners enabling them by the working of his Spirit to respond in faith to his love and to live in freedom in the Gospel. In the realm of law, the kingdom on the left hand, God works in a hidden way through the structures he has in creation built into his world, and thus drives the world of history toward the realization of his purpose in the Gospel....
>
> Hill-Burton funds are a legitimate expression of the function of the political authority to work for the common good. The church should be concerned, however, that these funds are properly used for the good of all the people, and that they not be misused for the aggrandizement of ecclesiastical organizations. Hospitals or other charitable institutions under ecclesiastical control should make proper public acknowledgement of the use of such funds and should be scrupulous in keeping such facilities open to all persons in the community.[1]

The report of Empie, dealing specifically with Hill-Burton funds, was in essential agreement with that of

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[1] Ibid., Exhibit A, pp. 1-2.

Quanbeck, with similar exhortations for the scrupulous use of such funds when they were accepted, as well as an exhortation to the churches to try as much as possible to utilize their own resources before accepting such funds.[1]

The committee was in general agreement that the broad issue of church and state relations needed further study, as well as the "more limited subject of Hill-Burton Funds."[2]

It is interesting to note the request of President Schiotz quoted earlier and the response which was initially reflected in the minutes of the Social Trends Committee as discussed above. The request of Schiotz seemed to assume a position of almost "absolute" separation of church and state, although he did not explicitly state that this position was based on theological grounds. The response of the Social Trends Committee raised a fundamental question of the propriety of the term "separation" when one looks at the Lutheran doctrine of the two kingdoms. The differences implicit here seem to bear out, in part, Professor Quanbeck's view that, from the outset, the presidents of the synods, as well as the executive officers of the National Lutheran Council, wanted the Social Trends Committee to find a basis in Lutheran theology for what Quanbeck termed a "Baptist lay theology of separation of church and state."[3]

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[1] Ibid., Exhibit B, pp. 1-3.

[2] Ibid., p. 6.

[3] Warren A. Quanbeck, private interview at his home in St. Paul, Minnesota, June 19, 1970.

At the November, 1960 meeting of the Social Trends Committee, the statement on Hill-Burton Funds was again discussed, and a revised statement was prepared for the annual meeting of the National Lutheran Council, to be held in Detroit at the end of January, 1961. Another significant item at the November, 1960 meeting of the committee was the reading of a paper prepared by Professor Howard Hong, entitled "Aims and Perspectives of Education as Seen in a Christian Perspective." The paper was discussed and judged to be of such importance as to be a possible frame of reference for other studies which might be done at a later date. The paper was particularly significant as background material for the committee's study of public funds to non-public schools on two counts. First, there was an allusion to extra-church support and its problems:

> Because of a proliferation of departments and courses, extra financial burdens have fallen upon many colleges, some of which have found outside aid at the price of diminishing or eliminating their relationship to the parent church. This tendency has been abetted by the sometimes insignificant financial aid given by the sponsoring deonomination (sic).[1]

Second, there was a clear statement of the aim of the Christian College, which Hong saw in his paper as threefold:

> a) To awaken, educate and develop for Christ, for the Church and for the culture those students brought up in the Christian tradition....
> b) To provide for its students a community which will foster a sense and understanding of the relevance of the Christian vocation....

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[1] Minutes of the Social Trends Committee, November, 1960, Exhibit A, p. 3.

> c) To teach all courses of instruction so as to challenge the secularization of thought....[1]

The significance for the future study of the committee is seen in the warning against the dangers of seeking aid for church colleges outside the church, and in declaring that the college is clearly an important part of the work of the church, with a sectarian purpose.

At the 43rd annual meeting of the National Lutheran Council in Detroit, January 31-February 3, 1961, the Social Trends Committee moved that their statement, "Church Hospitals and the Hill-Burton Act" be adopted. This statement wrestled with the problem of the separation of church and state as an American idea on the one hand, and the Lutheran doctrine of the two kingdoms on the other. The statement pointed out that both church and state are involved with matters of human welfare. Thus, as would be expected, there are many common concerns in areas of public life. The fact that there are such common concerns should show the necessity for the wholesome and intelligent cooperation or coordination of programs which relate to human welfare. In such programs of coordination or cooperation, however, the church should not be seen as an agent of the state and the state should not be seen as an agent of the church. The statement went on to point out that the procedures which are to be followed in particular situations are far from clear. The Hill-Burton Act deals with an area of service in which both the church and the state have much in common, and is an example of the kind of church-state cooperation permissible under the general principles given above. The statement went on to offer six propositions for consideration, and ended with a section of procedural recommendations for the churches:

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[1] Ibid.

> a) Make every effort to finance their hospitals completely with their own resources.
> b) Accept public tax funds for their hospitals only when the possibility of providing much-needed facilities under public auspices has been thoroughly explored and found not feasible.
> c) If public tax funds are accepted, be scrupulous at all times in acknowledging the use of such resources in the construction of the buildings and in observing the ethical requirement of this fact with respect to the manner and extent of furthering religious objectives in a welfare institution thus financed.[1]

The report of the Social Trends Committee was discussed and some minor changes were made in the statement on Hill-Burton funds. A motion to delete paragraph "b)" in the procedural recommendations failed. When the discussion came to a close a substitute motion was brought to the floor as follows:

> That the statement "Church Hospitals and the Hill-Burton Act" as found in Exhibit A of these minutes, be approved by the Council for transmission to the American Lutheran Church in response to the request of the Evangelical Lutheran Church to the 1960 Annual Meeting of the Council.[2]

The substitute motion won, but shows, at least in part, how intense the debate on church-state relations was even at this early stage. In effect, the motion was almost minimal in terms of approval. By adopting the substitute motion, the Council avoided the problem of having to adopt an official National Lutheran Council position, which would have been the case if the original motion to adopt the statement had been approved. Instead it simply approved, in effect, the transmission of the statement to the American Lutheran Church. Thus the burden of responsibility for the statement lay with the Social Trends Committee rather than with the National Lutheran Council. The statement was clearly not a "hardline absolute" position on separation of church and state.

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[1] National Lutheran Council, Annual Reports and Minutes, New York: Office of the Executive Secretary of the National Lutheran Council, January 31-February 3, 1961, Reports, p. 5.

[2] Ibid., Minutes, p. 9.

Before the Social Trends Committee held its next meet-in March, Robert E. Van Deusen testified before the House Education and Labor Subcommittee. The political situation at this time was quite unique, both for the nation at large and for Lutherans in particular. Less than two months before Van Deusen's testimony to the subcommittee, the United States had inaugurated its first Roman Catholic president, John F. Kennedy. In connection with this election, twenty Lutheran theologians across the country had developed a public statement backing Mr. Kennedy's candidacy for the presidency. These men were members of the faculties at Northwestern Lutheran Theological Seminary, Yale Divinity School, Wittenburg University, Chicago Lutheran Theological Seminary, Luther Theological Seminary, Hamma Divinity School, Lutheran Theological Seminary in Philadelphia, Augustana

Theological Seminary, Federated Theological Faculty at the University of Chicago, the State University of Iowa School of Religion, and Grand View College. On November 5, 1960, they released the following statement to the press:

> It is apparent that the religious issue is still vital to voters in the coming election, in spite of all efforts of the candidates to avoid it. In view of the repeated clear statements of Senator John F. Kennedy, we feel that a vote against him because of his religion would be a breach of our tradition of separation of church and state.
>
> Furthermore, because of Senator Kennedy's forceful and imaginative stand on foreign policy, civil rights and social welfare, the undersigned support his candidacy for the Presidency of the United States and thus demonstrate their confidence in his ability to be not a "Catholic" or "Protestant" President but a great American President.[1]

This situation contributed to some strong disagreement between this group of Lutheran educators and at least some of the leaders of the newly formed American Lutheran Church.[2] A second factor related to this question had to do with a kind of underlying anti-Catholic feeling which was sensed by some of the Lutheran leadership. For example, in response to one of the early drafts of a statement on public funds for nonpublic schools by the Social Trends Committee, Marcus Rieke, president of Texas Lutheran College, wrote the following to Carl Reuss:

> What I have said above, especially with reference

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[1] "20 Lutherans Support Kennedy; Deplore Injection of Faith Issue," New York Times, November 6, 1960, p. 67.

[2] Quanbeck, June 19, 1970. Quanbeck asserted that, in response to the publishing of this statement, President Schiotz had considered it serious enough to come to Luther Seminary for a serious discussion with faculty members who had signed the published statement.

> to compulsory schooling at the lower level and voluntary education at the higher level, would be only a partial answer to legislators who think we oppose the Roman Catholic institutions and endorse that which benefits Lutherans. Perhaps a partial answer is better than none, but Carl, I have a sneaking suspicion that the legislators' suspicions may be quite accurate--it's this that bugs me and about which I would like some time a personal discussion with you.[1]

It was within this context that Mr. Van Deusen delivered his testimony of March 17, 1961, to the House Education and Labor Subcommittee, which was considering a bill for federal aid to education, and to which bill Roman Catholic representatives were asking for amendments which would include some aid for their extensive system of parochial schools. The entire text of his testimony appeared in the March 18, 1961 issue of the New York Times. The testimony was particularly significant inasmuch as it claimed to be a position shared by the National Lutheran Council and Lutheran leaders in general. The testimony was divided into two sections, the first apparently related to the National Lutheran Council position, and the second clearly labeled as the consensus of Lutheran leaders as Van Deusen understood it. In the first section Van Deusen pointed out that the National Lutheran Council opposed loans or grants to nonpublic elementary and secondary schools, that religious groups had the right to establish private schools but could make no claims on public funds for these schools, that public funds for church schools would raise grave questions of constitutionality since it would be tax support for sectarian instruction, and finally that it would invite sectarian groups to expand schools beyond their ability to support them. In this last argument, Van Deusen was arguing that such public support of parochial schools would lead to the fragmentation of society by the expansion of already existing parochial school systems, the development of new parochial school systems, and the growth of private schools in the south to perpetuate racial segregation. In summarizing this part of his argument, Van Deusen said:

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[1] Marcus Rieke, letter to Carl Reuss, May 31, 1961 (American Lutheran Church files, Minneapolis.)

> Therefore any bills or amendments in the Congress which would authorize public funds for non-public primary or secondary education would not be in the best interests of our nation.[1]

In the second section of his testimony, Van Deusen alleged that the consensus of Lutheran leaders, as he understood it, was in agreement with the arguments in the first part of his testimony. He further pointed out that the consensus of Lutheran leaders, as he understood it, was that the public tax supported school system deserves the moral and financial backing of the entire community. He stated specifically that he felt there was consensus among Lutheran leaders on the following statement:

> Public subsidy of the program of any religious group in our pluralistic culture is wrong, since it forces individual citizens to contribute to the financial support of a faith with those (sic) tenets they do not agree.[2]

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[1] "Lutheran Statement on School Bill", New York Times, March 18, 1961, p. 10.

[2] Ibid.

A second public statement emanating from the National Lutheran Council before the March meeting of the Social Trends Committee appeared in Time:

> The extension of public grants or credits to private or parochial schools would raise grave questions of constitutionality, since it would clearly be a form of tax support of sectarian instruction. It would also constitute an invitation to sectarian groups to expand their schools beyond their ability to support them.[1]

By the time the Social Trends Committee met in New York on March 29, 1961, the National Lutheran Council, through its representatives, had already made clear-cut public statements on the issue of public funds to nonpublic elementary and secondary schools. These statements were in keeping with a strict separation of church and state position.

When the Social Trends Committee met in March, Paul Empie reported the request of the National Lutheran Council Executive Committee that the Social Trends Committee broaden its study of the use of public tax funds in support of church colleges to include the use of public tax funds for aid to nonpublic schools at the primary and secondary levels.[2] He also indicated that he felt the issue would best be approached from the point of view of public policy, and not constitutionally. In reporting his testimony to the House Committee studying this issue, he pointed out that he had made a distinction between elementary and secondary education on the one hand, and higher education on the other hand, on the following grounds:

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[1] Philip A. Johnson, quoted in "The Church-State School Debate," Time, Vol 77 (March 24, 1961), p. 10.

[2] Minutes of the Social Trends Committee, March 29-30, 1961, p. 4.

> 1) Higher education is not compulsory
> 2) Students in secondary and elementary schools are younger and more susceptible to systematic indoctrination.
> 3) Higher education in our country is pluralistic by nature. The various church bodies have their own schools. Most of them are pluralistic from the standpoint of the makeup of their student body.[1]

Empie went on to argue that he felt the experience in the United States has shown that private institutions of higher education have not posed a threat to public institutions of higher education.

In the discussion which followed three conclusions were reached by the Committee. First, "there is no valid theological concern which would be helpful in deciding the position which is to be taken."[2] Second, legal-constitutional questions should not be considered by the church but should be left "for the lawyers and the courts to discuss."[3] Third, the best position from which the church could approach the problem would be "as Christians under the law with concern for the public interest."[4] Specific assignments were made to prepare a document for the following day's meeting.

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[1] Ibid.

[2] Ibid. The statement seems unequivocal in the minutes. Yet Quanbeck indicated in his June 19, 1970 interview with me that it meant only that there was no absolute or final word on the issue in the Lutheran confessional statements. This explanation is difficult to understand.

[3] Ibid.

[4] Ibid.

Quanbeck was to deal with the general introduction, Reuss with the use of public funds in support of nonpublic elementary and secondary schools, and Hong with public aid to privately-supported colleges and universities. These papers were discussed the next day, and the same three men were asked to prepare a revised draft of the paper on the basis of the discussion. This draft was to be circulated among the members of the committee who would, in return, send their criticisms and suggestions to Reuss. Reuss, Quanbeck, and Hong, on the basis of these criticisms would then prepare a revised draft for a special meeting to be held in Chicago, April 28.[1]

Subsequently a revised draft was prepared by Hong, Reuss, and Quanbeck entitled "Use of Public Tax Funds For Non-Public Schools", and circulated among the members of the committee as a preliminary draft for review and criticism within the church bodies participating in the National Lutheran Council. The responses to this document, as well as other correspondence at this time, indicated that there were sharp disagreements on several items in the document. George Schultz, Executive Secretary for the American Lutheran Church, had written a letter of commendation to Philip A. Johnson for his statement in the March 24, 1961 issue of Time, and in which he expressed his personal fears about government loans to church institutions of higher education.[1] In his response to Schultz, Johnson included an interesting comment showing his concern about the direction of the Social Trends Committee:

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[1] Ibid., p. 5.

> I share your feeling concerning aid to higher education, and the Social Trends Committee of the Council is at present working on a statement which will be used in this connection - or at least available in this connection. However, I am afraid that if I read the boys' minds correctly, they may not come out at the same place where you and I would come out. They seem to have no basic objections to federal funds to institutions of higher learning, or at least this was the impression I gleaned from sitting in with them at their meeting last week.[2]

The document prepared by Hong, Quanbeck, and Reuss was a seven page, carefully worded statement with a preface and three sections. The preface listed three assumptions which guided the committee in the development of the paper and which were implicit in its conclusions:

> 1. Parents have the fundamental responsibility for educating their children, yet the entire community shares in a concern for the adequate education of the oncoming generation.
> 2. Concepts both of natural law and of theocracy are rejected as unsound foundations for public policy.
> 3. Freedom of religion is jeopardized for all religions when the practical effect of any legislation is to aid and advance the sectarian objectives of a specific religious establishment.[3]

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[1] George S. Schultz, letter to Philip A. Johnson, March 23, 1961 (American Lutheran Church files, Minneapolis).

[2] Philip A. Johnson, letter to George S. Schultz, April 3, 1961 (American Lutheran Church files, Minneapolis).

[3] Social Trends Committee, "Use of Public Tax Funds for Non-Public Schools", 1961 (mimeographed. American Lutheran Church files, Minneapolis), preface.

In addition, the preface indicated the purpose of the committee:

> The effort of the Committee is to recommend to the National Lutheran Council a position on this issue which it can commend to its participating bodies as a basis for their own courses of corporate action.[1]

The first part of the paper dealt with the Lutheran position of the two kingdoms, and attempted to show how the work of both kingdoms intertwines in the world, so that there may at times be coordination in programs of overlapping interest for the state and the church, and at other times there may be cooperation. With reference to federal aid to education the document read:

> The current proposals for Federal Aid to Education deal with an area in which Church and State have interests in common. They recognize that the life of the nation in our time demands the most effective development and utilization of the abilities and skills of its citizens. In this program a large degree of coordination or cooperation is unquestionably possible, but at the same time the question arises how best to preserve proper Church-State relationships in a pluralistic society. We propose the following considerations on the basis of the common good in American life.
> 1. American society has a place for public, private and church related educational systems....
> 2. It is axiomatic that public tax funds should be used only for the common good and not for private or sectarian advantage. If public support of private or parochial schools should become accepted as being in the public interest, and be ruled unconstitutional by the courts, we believe that the Constitution should be amended so as to make it possible. But we have no right to subvert the Constitution.
> 3. Because religion plays a significant role in the life of the people and of the nation, the study of religion has a proper place in the curriculum of the public schools.... The objective and scholarly study of religion is a part of any sound and comprehensive educational system.[2]

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[1] Ibid.

[2] Ibid., Part I, pp. 1-2.

The second part of the paper dealt with private elementary and secondary schools and began with the following statement:

> We oppose the granting of public aid to private elementary and secondary schools. In support of our position we offer the following considerations.[1]

In support of this opening statement, Part II of the document listed nine separate points. First, the American pattern of public schools has provided a necessary core of common culture in a pluralistic society. Public aid to private schools should be prohibited because it would contribute to the fragmentation of American communities. Second, public funds for private schools would lead to government control of private schools, and their subsequent loss of freedom. The third point linked a judgment concerning indoctrination to the argument:

> Education at the elementary level, and to a lesser extent at the secondary level, relies heavily upon indoctrination of the pupils. There is neither place nor capacity for critical individual judgment of what may be valid. In the public schools, through election of local school board members, the community retains control over what is taught in its schools. To provide public funds for financing the indoctrination of views over which the public at large has no control strikes us as an irresponsible exercise of governmental power.[2]

Fourth, the purpose of parochial schools is to preserve and propogate the faith. Tax support of such schools compels citizens with other or no religious views to support a religion to which they do not subscribe. Fifth, the parents' rights to send children to private schools must be safeguarded. Sixth, public schools are not godless, but it is not their task to teach religion in the sense of attempting to persuade children to a certain religious commitment. Nevertheless, the public schools should teach about religion in an objective way. Seventh, there are some public funds which are acceptable for children in parochial schools which accrue solely to the individual qua individual, and not qua student. School lunch, health and safety programs, and bus transportation which does not entail special or devious routes are examples of this kind of acceptable aid. On the other hand, no funds should be given for books, and no loans and/or grants should be given for buildings, equipment or salaries. Eighth, loans or conditional grants which are used by the government to recruit students to the teaching profession should be allowed to be satisfied by service in either public or private schools. The ninth point refers to income tax deductions and its relation to religious contributions:

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[1] Ibid., Part II, p. 1.

[2] Ibid., p. 2.

> In keeping with our conviction that parochial schools in their primary purpose are religious institutions we regard it as valid for government to accept tuition payments made by parents to church and non-profit private schools as constituting, for income tax purposes, contributions made to religious and educational organizations. Exploration should be given also to tax-credit and other direct and indirect aid to parents who prefer to send their children to private rather than public elementary and secondary schools.[1]

The third part of the paper dealt with aid to higher education and was developed in three sections with a concluding statement at the close of Part III. The first section was introductory and maintained that there is a distinction between elementary-secondary education and higher education which is of vital importance in the question of public funds to non-public schools. The second section dealt with the hazards raised for the institutions of higher education when they accept public aid for their educational programs. The third section listed the kinds of programs which were to be endorsed. The final section was a general conclusion to Part III.

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[1] Ibid.

In the first section of Part III, three points were given to defend the distinction between public aid to private schools on the elementary-secondary level and public aid to private colleges and universities. First, higher education in the United States has its genesis in private groups, primarily the churches, and still accounts for a large share of students in higher education. From the point of view of public interest it is maintained that private higher education "has been and is of extremely significant value economically, quantitatively, and qualitatively."[1] Second, because higher education is non-compulsory, students may attend anywhere in the country, given the financial ability and educational attainment to do so. Such a great variety of colleges is not the kind of divisive factor in particular communities which could be the case with two or three elementary-secondary system. Third, almost every religion is represented in higher educational institutions and, indeed, these institutions reflect the pluralism of American society. Because of this, public aid on the higher education level cannot be interpreted justifiably as contributing to the establishment of religion, which might be the case if only one or two religious groups had colleges in large numbers.

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[1] Ibid., Part III, p. 1.

In the second section of Part III, two dangers were pointed out. First, continued acceptance of public funds may weaken the relationship of the institutions to the church. Second, the acceptance of public funds may influence the internal workings of the school to such an extent that institutional autonomy will be seriously impaired.

The third section of Part III recognized the problems of intellectually capable young men and women who are unable to attend college because of economic hardship. To overcome this problem three programs of public aid in relation to higher education were endorsed:

> 1. state and federal individual scholarship programs based on ability and need, calculated on the basis of full and actual educational costs, and administered by the institutions according to general specifications of ability and need,
> 2. state and federal tax-exemption or tax-credit provisions covering tuition, fees, and books, and
> 3. state and federal loans at low interest for housing and academic facilities.[1]

In summary, Part III warned against inadequacy of grants and scholarships in terms of basic overhead costs, and also warned against grants and scholarships geared too much toward natural sciences, and not enough toward the study of the humanities and social sciences.

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[1] Ibid., p. 2.

Before the Committee's special meeting of April 28, 1961, responses to the revised statement of Hong, Quanbeck, and Reuss had come back with suggestions for changes. Some of these letters showed sharp disagreements among Lutherans on at least one of the most crucial points in the statement. The statement on tax credits and exemptions, for example, was questioned by Professor Forell of the committee:

> One statement only leaves me bewildered at present. Part II/2,9 "Exploration should be given also, etc." I don't think I understand it - and if I do I don't like it.[1]

The same kind of question was raised by both John Stensvaag, President of the Lutheran Free Church and Engebret O. Midboe, Executive Secretary of the National Lutheran Council Bureau of Service to Military Personnel. Stensvaag noted on his copy of the statement that he had strong disagreements with any kind of aid whatsoever to parochial schools and said:

> My concern is that the statement should not go beyond areas in which there is consensus among the participating bodies in the Council. As I see it, this would mean, for the present, making no statement on matters discussed in Section II, 7,8,9. I have written a few comments on the paper itself.[2]

Midboe felt that it would be improper to accept special tax credits for payments to church and non-profit private schools for tuition or similar expenses. He raised the additional point that, in his judgment, a constitutional amendment to allow public aid to parochial schools is entirely wrong, no matter how overwhelming the vote might be to amend the constitution.[1]

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[1] George Forell, letter to Carl Reuss, April 23, 1961 (American Lutheran Church files, Minneapolis).

[2] John Stensvaag, letter to Benjamin Gjenvick, April 21, 1961 (American Lutheran Church files, Minneapolis).

Before these letters of response to the draft had come in, however, Carl Reuss had received another letter of interest to the work of the committee. This letter was from George Schultz, and grew out of his earlier correspondence with Philip Johnson. Schultz's letter to Reuss is further evidence of the disagreement among Lutheran leaders on this issue:

> In the first place I think we would be very embarrassed, having accepted millions of dollars of government loans to argue that the Catholic Church should not have the benefit of those loans either. In the second place I think we would be embarrassed to argue any point in this case, for in my opinion the principle of church and state separation is as much violated by loans which are made on terms so far below the market that they must in themselves be subsidies but sweetened up by calling them a different name. Furthermore the acceptance of government loans because the Church cannot supply the funds apparently will only build up the operating costs of the institutions to the point where eventually the government must subsidize in order to operate the institutions. In my mind this second step is inevitable though obviously in the minds of those who favor the acceptance of loans though not grants, the second step is not inevitable. For my part I shall be content to let history prove how inevitable the second step becomes.[2]

Following the receipt of comments on this initial draft of the statement, Reuss and Quanbeck prepared a revised draft which was to be used for further discussion at the special April 28 meeting in Chicago. This "Confidential Draft" carried with it some significant substantive changes, as well as other changes which were apparently introduced to refine the language of the previous draft, and to simplify the structure of the document. In terms of the substantive items in the statement, there were omissions, changes, and additions which are significant to note.

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[1] Engebret O. Midboe, letter to Carl Reuss, April 18, 1961 (American Lutheran Church files, Minneapolis).

[2] George S. Schultz, letter to Carl F. Reuss, April 7, 1961 (American Lutheran Church files, Minneapolis).

The statement in the preface of the previous draft regarding the rejection of concepts of both natural law and theocracy as foundations for public policy was omitted; the statement in Part II of the previous draft regarding the right of parents to send their children to private schools was omitted; and the warning in Part III against the inadequacy of grants and scholarships in terms of basic overhead costs, and against grants and scholarships geared too much toward natural sciences, and not enough toward the study of the humanities and social sciences, was omitted.

In the previous draft it was noted that the section on elementary and secondary education included a statement regarding the exploration of the possibility of tax-credit and other direct and indirect aid to parents who wish to send their children to parochial schools. In the revised draft the substance of this statement was completely changed:

> Exploration should be given also to the possibility of teaching certain subjects to parochial school children within and by the public schools. We reject as unsound, however, the proposal to give direct tax credit

for tuition payments to private or parochial schools.[1] The statement both rejected its previous statement on tax-credit, and introduced the additional concept of "shared time" as a possible relief for the economic pressures of the parochial school.

In the revised draft the concept of indoctrination was included under the section on higher education for the purpose of comparison to show that:

> ...indoctrination is much less significant among students of college age. Church-related colleges do not, therefore, serve the sectarian purposes of a denomination so immediately or directly as do primary schools.[2]

In the section on higher education the new statement restated the fears of the previous statement concerning the weakening of ties with the church and the loss of freedom through government control, and added to these fears a third one, "the possibility of misusing public funds for sectarian advantage."[3]

The previous statement had included the endorsement of low interest state and federal loans for housing and academic facilities. The revised draft was changed significantly in this regard.

> We do not ask for loans for college housing, but we doubt that acceptance of such loans compromises the

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[1] Social Trends Committee, "Use of Public Tax Funds for Non-Public Schools", Revised draft, 1961 (mimeographed. American Lutheran Church files, Minneapolis), p. 4.

[2] Ibid., p. 5.

[3] Ibid.

> character of the church college. We believe that Lutheran church-related colleges should neither seek nor accept government loans or grants for academic facilities, libraries, or other non-residential buildings, or for research or instruction programs.[1]

While it is significant to note the marked difference in the wording of this part of the revised draft, it is even more important to note that the new wording based its position, not on the concept that the church has no right to ask for the loans or grants, but rather on the grounds that, "Institutional integrity and loyalty thereby, we believe, would be jeapordized."[2]

A final paragraph was added to the new draft which is also of significance since it was stated in the form of a strong exhortation to the church colleges in terms of their practices:

> If church colleges by past actions have followed courses contrary to the position the church may take on governmental aid to non-public schools it is our conviction that these practices should stop and that further dangerous precedents be avoided.[3]

On April 28, 1961 the Social Trends Committee held a special one-day meeting in Chicago to discuss the draft which had been prepared by Quanbeck and Reuss. As a result of this meeting, the revised draft on Quanbeck and Reuss was itself revised and labeled "Revised Confidential Draft." The committee members agreed to share this document on a very limited basis with persons who might assist in evaluating and criticizing the position of the document.[1] The revisions of the document which took place at the meeting are further evidence of the difficulties which the study entailed, as well as the disagreement within the church on the basic issues related to the question of public funds for nonpublic schools.

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[1] Ibid., pp. 5-6.

[2] Ibid.

[3] Ibid., p. 6.

The first part of the document was allowed to stand essentially as Quanbeck and Reuss had revised it. There were small changes in wording here and there, but the basic substance of the section was unchanged.

Part II, dealing with private elementary and secondary schools, had one significant omission. The entire section on public control in the previous document was left out, which read as follows:

> Public funds require public control over their use. We insist that government cannot make unrestricted grants or loans. Government aid to private schools necessarily, then, would extend governmental regulation to include design of buildings, admission policies, qualifications and salaries of teachers, content of curriculum, and other policies and practices of the school. The area of freedom for responsible private decision left to the school would to that extent be curtailed.[2]

The minutes of the meeting do not give details of the discussion, but it is obvious that to use this argument under private elementary and secondary schools would seriously weaken the argument for aid to higher education which appeared later in the paper. If government control is a serious threat to the autonomy of an educational institution at the elementary-secondary level, it is an equally serious threat at the higher education level.

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[1] Minutes of the Social Trends Committee, April 29, 1961, p. 7.

[2] Committee on Social Trends, "Use of Public Tax Funds for Non-Public Schools", Revised Draft, p. 3.

The most important and extensive changes in the document were made in the section of higher education. While no causal inferences can validly be drawn, it is interesting to note that Professor Hong, the author of the section on higher education in the original draft, did not meet with Quanbeck and Reuss for the first revision, nor was he present at the special April 28 meeting of the Social Trends Committee where the major revisions of the document took place in the section on higher education. To what extent the revision of that part of the draft might have been different, had Professor Hong been present, is a matter of conjecture. The format of the third section was vastly reworked and there were also significant substantive changes.

Three items remained the same in the revised document on higher education. The problem of control and loss of autonomy, as well as the problem of loss or weakening of ties to the church were again pointed out as pitfalls which may accrue to public support of private church-related colleges. Public aid to individual students was endorsed as in the previous document. Long-term low interest loans for housing were also endorsed.

Three significant items were deleted from this section of the previous draft. The statement on the fear of misusing public funds for sectarian advantage and the exhortation to church colleges to stop practices contrary to the position of the corporate church bodies on government aid were both deleted. The third deletion was even more significant, i.e., the section in the original document quoted earlier in this chapter which endorsed state and federal tax-exemption or tax-credit provisions covering tuition, fees, and books. J. Robert Busche, Assistant Executive Director of the National Lutheran Council, had served as acting secretary of the special April 28 meeting and had sent out the revised forms of the statement. He explained the deletion of the statement on tax-exemption for tuition to higher education on the following grounds:

> After considerable discussion, we concluded that this paragraph in its present form would weaken the argument for tax deduction as a legitimate relief measure with respect to primary and secondary parochial education since we built our case for such exemption on the basis of its being a contribution to a religious organization. We do not believe that this basis is valid in the case of higher education since we go to some lengths in the document to indicate that church colleges are not purely religious institutions and even declare that they are "quasi-public" in nature.[1]

Three significant changes were made in the section on higher education which either reversed the previous position or added a significant issue to the new document. The previous statement had urged that Lutheran church-related colleges neither seek nor accept government loans or grants because of the jeopardy of such action to institutional loyalty and integrity. The new document which came out of the April 28 meeting read:

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[1] J. Robert Busche, letter to Carl F. Reuss, May 5, 1961, (American Lutheran Church files, Minneapolis).

> Secured loans or matching grants for the construction of science laboratories, libraries, and other non-religious academic facilities or service structures, provided that the conditions of the loan or grant do not endanger full control by the college of the facilities so erected, and provided that the purposes are to preserve and to strengthen a balanced program of higher education under public, private, and church-related auspices, may well be within the public interest.[1]

A second change was the addition of a new section which introduced a new consideration to the substance of the document:

> At the same time, should the church fail to accept limited government aid it may thereby be handicapping its colleges with serious competitive disadvantages and so may in effect be decreeing for them the death sentence.[2]

One final section was added to the document under the section on higher education dealing with procedural recommendations:

> 1. Define clearly the role and purpose of higher education under church auspices and the extent to which it is vital to the life and mission of the church;
> 2. Make every effort to finance church-approved college and university programs entirely out of church resources.
> 3. Accept government loans only after due consideration has been given to long-term effects on the character of the higher education enterprise of the church.
> 4. Recognize that government grants with certain conditions attached thereto ultimately may compromise the character of the church's higher education enterprise and examine any contemplated requests for such

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[1] Minutes of the Social Trends Committee, April 28, 1961, Exhibit A, p. 5.

[2] Ibid., p. 6.

aid with this fact in mind.[1]

The responses to this "Revised Confidential Draft" were significant from at least two points of view. First, they came from many different people in leadership positions in the three major groups of Lutheranism; the American Lutheran Church, the Lutheran Church-Missouri Synod, and the church groups which were in the process of becoming the Lutheran Church in America. Second, they represented a diversity of viewpoints which raise a variety of issues, again showing the intensity of the differences among Lutherans on the issue of both church-state relations in general, and public funds to nonpublic schools in particular.

The letter of George Schultz, Executive Secretary for the American Lutheran Church, to Carl Reuss registered strong disagreement with the general thrust of the document:

> I've read the document on tax funds for education. My first reaction is a distinct feeling that an effort is being made to justify the status quo....Already, while this issue is being "studied", the report admits that to decline government aid may be handicapping church colleges and decreeing for them a death sentence. So why study the matter at all?...This is simply to say that The ALC need not bother with principles or policies; the fact that other schools accept such loans makes it mandatory for the ALC to do so "or die"....Let's not be naive. The same "need" to "insure adequate housing" by which loans are justified will be present shortly to

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[1] Ibid.; these procedural recommendations, as well as the statements of the kinds of aid and conditions under which they could be accepted, were adopted verbatim by the American Lutheran Church Consultation on higher education June 19-24, 1961. This conference included representatives from all the colleges in the American Lutheran Church. See A Report and Findings, Higher Education Workship, Minneapolis: The Board of College Education of the American Lutheran Church, 1961, pp. 100-102.

> insure adequate classroom facilities. Then...to underwrite the operation of the college....We're caught. The die is cast. I still stand on my prediction that in 15 years from now we shall think of the former church-owned and segment-owned institutions with the loving description of "schools with a Lutheran background."[1]

In addition to the response from Schultz, Reuss received letters from four educators in Lutheran higher education.

Marcus Rieke, President of Texas Lutheran College agreed with the sentiment of Schultz that the status quo was being defended. His own position was that only government loans for income-producing property are acceptable, and he agreed with the statement on its distinction between elementary-secondary schools and colleges, on the grounds that attendance at the latter is not compulsory. His letter also demonstrated a fear of government control through government subsidy:

> Carl, I certainly would not like to see us get any more involved with the Government than we are at the present time. I think we should make every effort as a Church to say "thus far and no further"...I don't like the other loan plans....For example, students who are enrolled in elementary and secondary education are "foolish" to pay their bills if they can borrow and have half of their loan cancelled when they go into teaching....this is the very point of my argument-- we are going to get into trouble and really unbalance the liberal arts program and let the government dictate in reality what the emphasis of our schools should be.... So I say let's have no government subsidy at all (there is too much now) for help to private and church (elementary and secondary) schools. I say also let's have no more than we are getting now for higher education.[2]

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[1] George S. Schultz, letter to Carl F. Reuss, May 25, 1961, (American Lutheran Church files, Minneapolis).

[2] Marcus Rieke, letter to Carl Reuss, May 31, 1961, pp. 1-2.

H.L. Yochum, President of Capital University in Columbus reflected much of the sentiment of Rieke, but added a new dimension of the fear of socialism in his letter to Reuss:

> One of the reasons which strongly influences my attitude is the fact that by every one of these proposals which we accept we are supporting and accelerating the trend toward socialism which has made such rapid progress in the past thirty years. It is still my basic conviction that the individual should not look beyond himself for any help he cannot give himself.... With each step away from self-support there is inevitably a surrender of self-determination, of independence, even of self-respect.[1]

Clement Granskou, President of St. Olaf College in Northfield, Minnesota, responded to the document quite favorably and concluded by saying, "I think the argument presented in the paper is about as effective as you can make it."[2]

The reply of Erich C. Knorr, Dean of the College of Arts and Sciences at Pacific Lutheran University in Tacoma, Washington, affords quite a radical departure from the "wall of separation" approach. His response seemed to reject this concept altogether:

> It seems to me that the important thing must always be the education of the child....We recognize, or ought to, that in modern society we pay taxes for many things that are quite antagonistic to our point of view and it seems illogical that religion should be the one area to be penalized....If it is proper to feed the child, to transport the child, it would seem proper to furnish money for textbooks for these children as well as for other children; it would seem proper to grant loans for erection of the buildings in which the books are being used, the meals are being served and the classes are

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[1] H.L. Yochum, letter to Carl Reuss, June 1, 1961, (American Lutheran Church files, Minneapolis).

[2] Clement Granskou, letter to Carl Reuss, June 7, 1961, (American Lutheran Church files, Minneapolis).

> being held....Certainly, there are plenty of pitfalls and many dangers inherent in this type of aid and assistance. We need to watch, we need to beware, but at the same time we need to stand up and assert our rights not only as Christians, but as citizens of our nation, to the same privileges and the same opportunities that are given to other of our citizens in the educational system...[1]

These four letters to Carl Reuss indicated that in the American Lutheran Church alone there was a broad spectrum of beliefs on the issue of public funds to nonpublic schools.

In addition to the responses received by Reuss there were a number of responses sent to Paul Empie and J. Robert Busche in New York City. These responses represented an even broader base of Lutherans. The letters were from Franklin Fry, President of the United Lutheran Church in America (later President of the Lutheran Church in America); W. Kent Gilbert, Program Director of the Joint Board Committee For a Long-Range Program of Parish Education (a committee of the Joint Commission on Lutheran Unity, the loose organization under which the four church bodies worked from 1956 until 1962 before their merger into the Lutheran Church in America); Oswald C.J. Hoffman, Director of Public Relations for the Lutheran Church-Missouri Synod; David Granskou, Secretary of the Department of Theological Cooperation of the Division of Lutheran World Federation Affairs of the National Lutheran Council; and Engebret Midboe, Executive Secretary of the Bureau of Service to Military Personnel of the National

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[1] Erich C. Knorr, letter to Carl F. Reuss, June 14, 1961, (American Lutheran Church files, Minneapolis).

Lutheran Council. In addition to these responses, Busche sent Reuss a statement released by the Executive Board of the United Lutheran Church in America in its meeting of October 13, 1961. Entitled "A Statement on the Use of Public Funds for the Support of Parochial Schools.", the document was very explicit in the position it espoused:

> Any authorization for the use of public funds for parochial schools constitutes a preferment inimical to the very impartial nature of a democracy. If one group has the right to use public funds for its schools, then all groups should have the same right. This would confuse public and private education and destroy the voluntary system secured by separation of church and state.[1]

Three important issues were raised by Fry in his letter. He wondered about the strength of the argument that the noncompulsory nature of higher education separates it from elementary-secondary education to a degree significant enough to warrant aid to the former but not to the latter:

> Where secondary education is not compulsory, is the use of federal money in its support legitimate? If college education were ever to become compulsory in whole or in part, would that remove or even affect our objections in principle to public support?[2]

The other two issues raised by Fry are closely related, although distinct from the first. He took issue with the series of judgments about specific aspects of public aid to nonpublic higher education by saying, "it seems to me to be nothing but holding the line where by sheer accident we happen to be at the present."[1] With reference to the comment in the committee's document regarding the possibility of the demise of the church colleges through their failure to accept limited government aid, Fry indicated, "The committee realizes of course that the argument here is purely prudential."[2]

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[1] J. Robert Busche, letter to Carl F. Reuss, November 21, 1961, (American Lutheran Church files, Minneapolis).

[2] Franklin Clark Fry, letter to Paul C. Empie, June 5, 1961, (American Lutheran Church files, Minneapolis).

W. Kent Gilbert gave a careful analysis of the arguments which the document of the committee attempted to use for the defense of its position on various issues. He pointed out the problems which he saw related to the suggestion of shared time with reference to parochial schools. Second, he attempted to show how the distinction between higher education on the one hand and elementary-secondary education on the other hand may be a difficult distinction to maintain:

> If the parochial school system is based upon the idea that all education should have an orientation to the Christian religion, it would be impractical to separate certain subjects and assign them to the public schools while others are being dealt with in the parochial schools. If this is not the case, this paragraph then opens the way for the proponents of parochial schools to claim that the state should pay the cost of those subjects which are of a "secular" nature when they are taught in the parochial school.... I am not sure that the Roman church or others who are serious about the business of church-related higher education would claim that their universities and colleges are essentially community services with religious overtones in a way that is qualitatively different from the parochial school system....By the same token, it could be reasoned that if many churches wanted to maintain parochial schools, the public school system could be abandoned, or at least would have reason to support the parochial schools with tax funds....[3]

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[1] Ibid.

[2] Ibid.

[3] W. Kent Gilbert, letter to Paul C. Empie, June 2, 1961, (American Lutheran Church files, Minneapolis).

Gilbert concluded his letter by suggesting that part of the problem with the document was that it tried to have one consistent statement which covered both elementary-secondary education and higher education. He went on to suggest that "the document would be on surer ground if it addressed itself only to the question of public funds for elementary and secondary schools."[1] This last statement is extremely puzzling in the light of the rest of the letter which went to such great pains to use careful argumentation to support his position in each instance. In contrast, this last suggestion was left hanging with no explanation as to why it was given, or why, in the mind of its author, the question of public funds to higher education was essentially a different question from that of public funds to elementary-secondary education. This is all the more puzzling when one notes that a large portion of Gilbert's letter was given over to pointing out that the distinction between church-related higher education and church-related elementary-secondary education is difficult, if not impossible, to maintain.

Oswald C.J. Hoffman raised some of the same questions which were raised by Franklin Fry, but added a new dimension to the distinction between higher education and elementary-secondary education. While he did not want to grant a distinction between the two levels of education in terms of purpose, he did see a difference in terms of system:

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[1] Ibid.

> Higher education appears to me to be distinguished from elementary and secondary education by the fact that in the latter two areas there is a system, both in the community and in the church. There is no system of higher education, nor is there likely to be, either in the community or in the church. I think this is true even of the Roman Catholic Church which has greater control over its institutions of higher education than do other churches.[1]

Hoffman's closing note reflected a fear similar to that of George Schultz, noted earlier in this chapter. Hoffman said:

> If the role and purpose of higher education under church auspices is not more clearly defined, the time will come when our church colleges will be simply community colleges with a Christian flavor. If that happens, the church will take very little interest in them. Probably the church takes very little interest right now, a fact which may account for the difficulty the church colleges are encountering.[2]

David Granskou's letter went over many of the same problems raised in the other letters, but raised some additional thoughts regarding the "child benefit" concept incorporated into the statement of the Social Trends Committee:

> ...Are there any benefits which "accrue solely to the child without regard to his status as a student?" Isn't the principle upon which you determine whether it is proper to give to a private school or not determined primarily on whether the aid which you give the private school would divert funds from the public school in a significant way, and in this case could you not on the basis of this principle say that, therefore, such things as tax exemption, school lunch programs, health and safety education programs and also some types of public school bus transportation would be allowable. It would seem to me that the other things which you enumerate... would divert money from the public educational system, and, for this reason would be unsatisfactory and improper.[3]

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[1] Oswald C.J. Hoffman, letter to Paul C. Empie, May 15, 1961, (American Lutheran Church files, Minneapolis).

[2] Ibid.

[3] David Granskou, letter to J. Robert Busche, May 26, 1961, (American Lutheran Church files, Minneapolis).

In a previous letter to Carl Reuss (noted earlier in this chapter), Engebret Midboe had voiced the view that he saw no grounds for giving income tax exemptions for tuition payment to schools. In his May 11, 1961 letter to Busche, he repeated this objection, but added this interesting statement:

> I would like to be corrected, however. If this were to be granted in the case of private elementary and secondary schools there would be argument for having it apply for tuition paid for people in higher education, too, it would seem to me.[1]

Midboe ended his letter with a strong commendation of the committee's statement, except for the part which he noted, and then goes on to say, "I sincerely hope it obtains currency before it is too late."[2] The exact meaning of this statement is difficult to determine, although it may have related to the feeling of tension and strong differences expressed both within the committee and within the Lutheran church groups on this issue. On the other hand, it may have been simply a concern that Lutherans in the United States develop a policy statement based on principle before practices developed which would preclude the development of such policies. Such a sentiment, for example, was expressed explicitly by Paul Empie to the National Lutheran Council Executive Committee members in a letter to them the following January:

> When this paper was distributed to a range of

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[1] Engebret O. Midboe, letter to Robert Busche, May 11, 1961, (American Lutheran Church files, Minneapolis).

[2] Ibid.

> persons on a confidential basis, the reactions indicated clearly that the subject calls for some kind of definitive treatment as soon as possible, since policies already in process of development and precedents established thereby may determine the outcome while groups like ourselves are still talking![1]

In the final analysis, this statement turned out to be prophetically accurate in terms of the outcome of the controversy over public funds to church schools among Lutherans in the United States.

Before the regular December meeting of the Social Trends Committee could take place, Empie had called an ad hoc meeting of the Social Trends Committee in New York City, November 20, 1961, just eleven days before the regularly scheduled meeting of the committee. This meeting was explained, in part, in the Agenda of the December 1-2, 1961 meeting of the Committee on Social Trends:

> ...In view of the fact that a number of basic questions were raised following circulation of the document to selected persons, the Executive Director asked the New York members of the Committee to meet on November 20, 1961 for an evaluation of the various comments and criticisms which have been received. The report of this meeting will be presented in connection with the consideration of the document.[2]

Following this meeting a memorandum was sent out to all the members of the committee, along with copies of criticisms which had been received of the document which was drawn up by the committee at the May 29 meeting. According to the letter of J. Robert Busche:

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[1] Paul C. Empie, letter to National Lutheran Council Executive Committee members, January 22, 1962, (American Lutheran Church files, Minneapolis).

[2] Agenda of the Social Trends Committee, December 1-2, 1961, p. 1.

> ...the Committee members who attended the special meeting arrived at a consensus of general support for the document in its major emphases, but suggested a number of minor changes which will be presented at the time of the meeting.[1]

In response to the letter of Busche, Carl Reuss introduced still another point of view which had been expressed in the American Lutheran Church. In reporting a meeting of the American Lutheran Church Board of Parish Education, Reuss indicated that two hours were given over to a study and discussion of the statement of the Committee on Social Trends concerning public funds to nonpublic schools. He indicated that the Board rejected the idea of the "child benefit" theory. In commenting further he stated:

> In this they recognized that they were not speaking the thoughts of leaders in the ALC parochial school movement. There are some of them who would go so far as to insist that the public school has failed as an American experiment and that other possibilities therefore need to be explored.[2]

It was the stated objective of the December 1-2, 1961 meeting of the Social Trends Committee, with reference to the statement on the use of tax funds for non-public schools, "to place this document in final form for consideration by the National Lutheran Council."[1] At the meeting Paul Empie reported on the ad hoc committee meeting of November. He pointed out that the ad hoc committee had made a few editorial changes of the document and had requested that he write a new introduction to the paper which would be submitted to the committee for its consideration. After a lengthy discussion of the document which took part of the morning of December 1, all of the afternoon of December 1, and all of the following morning the chairman appointed a committee composed of Carl Reuss, Warren Quanbeck, and Howard Hong to complete the work of the editorial revision of the document entitled "Use of Public Tax Funds for Non Public Schools." The clear intent of the meeting was that the document would be completed and in final form for the annual meeting of the National Lutheran Council January 30-February 3, 1962. Thus the sub-committee of Reuss, Quanbeck, and Hong, was requested to meet at the earliest possible date to complete the final edition of the draft.

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[1] J. Robert Busche, letter to Carl F. Reuss, November 21, 1961.

[2] Carl Reuss, letter to J. Robert Busche, November 24, 1961, (American Lutheran Church files, Minneapolis).

> The committee agreed that the revised draft should be circulated among Committee members, with the comments or criticisms directed to the staff. It was understood that Dr. Empie should bear the responsibility for final editions of the Committee members.[2]

The intent of the Committee was further born out in the preface to the document prepared by Reuss, Quanbeck, and Hong:

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[1] Agenda of the Social Trends Committee, December 1-2, 1961, p. 1.

[2] Minutes of the Social Trends Committee, December 1-2, 1961, p. 2.

> ...the Committee on Social Trends submits, December 1961, to the National Lutheran Council the following statement of its views on various issues involved in the use of public tax funds for church-related and other private schools at the elementary, secondary, and higher education levels.[1]

In addition, J. Robert Busche's letter of December 21, 1961 (which accompanied the revised document to the members of the committee) indicated the importance of haste and dedication in the reading of the document prepared by the subcommittee, so that, if necessary, a special meeting of the committee could be called prior to the annual meeting of the National Lutheran Council for the purpose of completing the paper for its final submission to the National Lutheran Council.[2]

Finally, in its annual report the Social Trends Committee indicated explicitly that a special meeting in January, 1962 was scheduled specifically in the hope "that the task might be completed in time for the 1962 Annual Meeting."[3]

At that January meeting the Social Trends Committee had reviewed the document page by page and voted to:

> ...transmit the January 20th draft of the statement "Use of Public Tax Funds for Non-Public Schools" to the NLC Executive Committee with a request for evaluative

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[1] J. Robert Busche, letter to Carl Reuss, December 21, 1961, (American Lutheran Church files, Minneapolis).

[2] Ibid.

[3] National Lutheran Council, Annual Reports and Minutes, New York: Office of the Executive Secretary of the National Lutheran Council, January 30-February 1, 1962, Reports, p. 1.

comments and such action as it may deem appropriate.[1]

Although rewritten, the new document was essentially the same as the previous one, with the exception that a fairly extensive introductory statement had been included in the new document. It warned against the divisiveness which can result from the then current debate over the issue of providing tax funds in support of nonpublic schools, unless the debate is carried on "in a way which furthers objective consideration of the many and complicating factors embedded in the issue."[2] It also pointed out that no simple solution to the problem is possible based upon some absolute principle of the separation of church and state, and indicated that historically there have been varying degrees of separation and cooperation between the church and the state in the United States. In addition, the introduction maintained that the issue should be debated on the grounds of the public good. There are no precedents in the Bible or in Christian doctrine which dictate a solution to the problem, and the solution is not necessarily the same at all levels of education. In the words of the document, "The paramount criterion is the public good, not loyalty to some absolute principle."[3]

The rest of the document was divided into three sections dealing with the issue in broad perspective, aid to nonpublic schools at the elementary and secondary level, and aid to nonpublic higher education. The arguments were essentially the same. The Lutheran position of the two kingdoms was used in the first of the three sections to set the stage, and a strong distinction was made between elementary-secondary education and higher education, so that aid to church schools at the elementary-secondary level was rigidly restricted to indirect aid as indicated in the previous drafts of the committee's statements, while aid to church-related higher education was permitted at a much more extensive level.

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[1] Minutes of the Social Trends Committee, January 20, 1962, p. 2.

[2] J. Robert Busche, letter to Carl F. Reuss, December 21, 1961, Enclosure, p. 1.

[3] Ibid.

The document was presented to the Executive Committee of the National Lutheran Council, but it was clear that they were not ready to accept it as a position statement of the Council. Harold Haas, chairman of the Social Trends Committee, reported at the annual meeting of the National Lutheran Council, that the Executive Committee had received the document of the Social Trends Committee as a progress report, "and that it had been reassigned to the committee for further study."[1]

In his report to the annual meeting, Executive Director Paul Empie gave a carefully worded analysis of the complicated nature of the issues related to their study. The conclusion implicit in his report was that the study of public funds to nonpublic schools needed to be pursued further by the committee.

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[1] National Lutheran Council, Annual Reports and Minutes, New York: Office of the Executive Secretary of the National Lutheran Council, January 30-February 1, 1962, Minutes, p. 16.

The events which led up to the 1962 annual meeting of the National Lutheran Council make it clear that the issue of public funds to nonpublic schools was, indeed, a deeply controversial issue among Lutheran leaders in the United States, and that the heat of this controversy was sharply focused at the 1962 meeting, with little or no chance of a resolution of the controversy. Following the ad hoc meeting of the committee on Social Trends called by Paul Empie in November, 1962, Reuss wrote to J. Robert Busche in response to the meeting, "Sorry I didn't know in advance that an Ad Hoc committee was meeting in New York...."[1] Reuss's letter and comment seem insignificant at first glance, but when one considers that Reuss was the vice-chairman of the Social Trends Committee, that he had not been notified in advance of the meeting of the committee, and that the meeting had not been called by the chairman of the committee, the comment becomes significant. It represents, in part, supporting evidence for the comments of Warren Quanbeck referred to earlier in this chapter that there was, indeed, a strong clash between the members of the Social Trends Committee on the one hand, and the National Lutheran Council Executive Committee and the heads of the church bodies on the other. It was clear that the National Lutheran Council Executive Committee was not at all pleased with the report of the Committee on Social Trends. The clash is seen further in a January 23, 1962 letter of Carl Reuss to Paul Empie, in which Reuss registers extremely strong protest to what he understood to be a pejorative comment by Empie that the Social Trends Committee had "limped along" under difficult circumstances and that the "drafts of studies usually were prepared under pressure and came before the committee too late to permit the kind of critical study and redrafting which was required."[1] One further example of the kind of intense difference which existed between the Executive Committee and the Committee on Social Trends is found in the response of Donald R. Heiges, President of Lutheran Theological Seminary at Gettysburg, to the report of the Social Trends Committee. At the January 29, 1962 meeting of the Executive Committee, Heiges presented a three page mimeographed statement of his response to the report of the Committee on Social Trends. The paper of Heiges begins with the statement that, in his view, "there are two basic (perhaps fatal) flaws in the draft."[2] The two basic flaws which Heiges sees are the failure, in his judgment, of the Social Trends Committee adequately to support their contention that there is a significant difference between church-related primary and secondary schools and church-related colleges, and the failure, in his judgment, of the Committee to give adequate attention to the question of constitutionality. It is not the substantive nature of his disagreements which point to a sharp clash between the Executive Committee and the Social Trends Committee. Rather it is the "flavor" of the language in the paper which reflects the strong disagreement. In his opening statement, for example, Heiges says:

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[1] Carl Reuss, letter to J. Robert Busche, November 24, 1961, p. 1.

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[1] Carl F. Reuss, letter to Paul Empie, January 23, 1962, (American Lutheran Church files, Minneapolis).

[2] Minutes of the Social Trends Committee, May 18-19, 1962, Exhibit "C", p. 1.

> The thesis that church-related primary and secondary schools, on the one hand, and church-related institutions of higher learning, on the other hand, are sufficiently different in purpose and program to deny the allocation of public tax funds to the former but to justify their allocation to the latter is so poorly supported that the "outsider" can easily dismiss the draft as a mere defense of vested interests.[1]

In discussing the question of constitutionality, Heiges went on to say:

> The draft does not take seriously enough the constitutional issue in the debate over the use of public tax funds for non-public schools, and therefore (a) disregards one of the strongest if not the strongest arguments in favor of the conclusions reached, and (b) betrays an almost cavalier attitude toward the Constitution of the United States.[2]

In response to the differences which had become so apparent by the time of the 1962 annual meeting of the National Lutheran Council, the Social Trends Committee tried again to resolve the conflicts which entered into its study. Before the next annual meeting of the National Lutheran Council, the Social Trends Committee held two meetings and engaged the services of a research assistant for a limited time to help with the completion of their study. Their work in the year of 1962 was, in large measure, directed toward the answering of three criticisms, namely that the distinction between lower and higher levels of education was questionable, that the problem of constitutionality had not been adequately addressed, and that there had not been enough contact with outside resource people.

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[1] Ibid.

[2] Ibid., p. 3.

At the May 18-19, 1962 meeting of the Social Trends Committee, several guests were present, and at least four papers were considered in connection with the study of the committee. The guests were C. Emmanuel Carlson, Director of the Baptist Joint Committee on Public Affairs; B.M. Christensen, President of Augsburg College and Seminary (Lutheran Free Church); Arthur O. Davidson, President of Wagner College (United Lutheran Church in America); Oswald Hoffman, Director of Public Relations for the Lutheran Church-Missouri Synod; R. Lanier Hunt, Director of the Department of Religion and Public Education of the National Council of Churches; Paul Kauper, Professor of Law at the University of Michigan; Dean Kelley, Executive Director of the Department of Religious Liberty of the National Council of Churches. These guests had been invited as consultants to help the committee continue in its study of public tax funds to non-public schools, and each of them was asked to speak. In introducing them, Chairman Harold Haas asked that the guests address at least the following questions regarding the Committee's document:

1. Is there another valid theological approach?
2. Is the constitutional issue important and integral to the discussion of the question?
3. Is the definition of "the public good" as set forth in the document an acceptable one?
4. Can valid differentiation be made between the intent and the effect of the church's work in higher and lower educational institutions?
5. Is a new approach needed in order effectively to make a statement?[1]

Professor Paul Kauper indicated that he accepted the major premises of the document which the committee had developed thus far. In his view no clear determination was possible of the position which might be taken by the court in interpreting the constitutionality of a particular stand on the issue which the committee was studying. He also pointed out that any attempt to distinguish between various types of religious colleges in this question would raise more problems legislatively than it would answer.

Mr. Hunt introduced the point of view that in general he believed that if the state can carry forward a particular function as well as the church, the state should do it. He further said that he believed the church would be under obligation to honor fully the intent of the state with respect to the use of public funds if it accepts such funds.

President Christensen generally agreed with the article, but expressed the judgment that direct Government grants to colleges would move far beyond what he considered to be proper support from public funds.

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[1] Ibid., p. 2.

Mr. Carlson felt that, although the committee's position paper set out to base its case on prudential grounds, there was, in effect, an appeal to non-prudential considerations at points where the paper urged the church and the state to maintain their proper roles. He also urged that to the extent that prudential arguments are used in the paper, it is necessary that in every case they should reflect not only a judgment as to their immediate benefit but their long-range implications. Finally he indicated that, in his judgment, the issue of constitutionality needed to be carefully examined because it had a direct bearing on the "common good", an important consideration in the document of the committee.

President Davidson felt that aid to nonpublic schools at the elementary-secondary level would weaken the public school system. He did not disagree with government aid to higher education, but was against government control. He also questioned the feasibility of the committee's stipulation that facilities constructed with the aid of public tax funds should not be used to advance specifically religious objectives, since in his judgment, such a clear delineation of what constitutes such use could hardly be determined.

Mr. Kelley reemphasized the importance of the constitutional aspect of the problem.

Oswald Hoffman felt that the statement was clearer in its expression of the theology of the state than of the theology of the church and indicated that in his judgment this resulted in giving up too easily the idea of separation of church and state. For instance, he pointed out that a clear distinction must be made between the "principle" of freedom of religion and the "policy" of separation of church and state. He also raised concern about the use of the term "common good", and suggested that a better term should be used, if possible, or a clearly defined statement of the meaning of the term should be given.

The rest of that day and all of the next day were given over to an intensive discussion of the points raised by the guests, as well as the direction which the committee should take in the completion of its task to develop a policy statement on the use of public tax funds for nonpublic schools. In the discussion the committee saw the development of its position as a "third position" in distinction to the Roman Catholic Church, on the one hand, and the absolute "wall of separation" position, on the other hand. On the morning of the second day consensus was expressed that the document would need to be rewritten, although the members "felt that most of the basic positions of the statement were still tenable."[1]

In its closing session the committee made the following suggestions for changes in the document's revision:

1. Clarify the position taken by the statement as a "third position."
2. Clarify and define the term "common good" and recognize the inherent and positive relationship between the Constitution and the "common good." Also stress the need to view the "common good" from the

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[1] Ibid., p. 6.

> perspective of long-range as well as immediate concerns.
> 3. Acknowledge the value and validity of the policy of separation of church and state to the extent that it has been a part of the American heritage and tradition.
> 4. Acknowledge the risks and dangers which are inherent in any position that may be taken.
> 5. Express the need for strong, truly Christian colleges.[1]

Harold Haas, Paul Empie, and J. Robert Busche were assigned the task of the preparation of a revised draft based on the discussion of issues in previous sessions of the meeting, and the request was made of Paul Empie that he was:

> ...upon concurrence of the Chairman of the Committee, to seek to obtain the services of a research assistant for a limited time in connection with the completion of the Committee's assignment of the "Use of Public Tax Funds for Non-Public Schools."[2]

Sometime after the May meeting Haas and Empie obtained the assistance of Bernhard Erling, Professor of Religion at Gustavus Adolphus College. Professor Erling spent part of July, August and September studying the issue, and subsequently prepared two papers which were distributed to the committee at its October meeting that same year. A revised draft on "The Use of Public Tax Funds for Non-Public Schools" had been prepared, primarily by Harold Haas, and sent out to the committee members prior to the October meeting. Some of Professor Erling's work had been helpful in the preparation of the draft as it came to the committee prior to its October meeting. In addition to the revised draft of the position paper and the two papers by Professor

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[1] Ibid., pp. 6-7.

[2] Ibid., p. 7.

Erling, Professor A.D. Mattson had prepared a paper for the meeting which represented his response to the revised draft of Harold Haas. When the committee met on October 28, 1962, in New York City, it had a revised draft to consider, as well as the three papers which had been prepared in relation to it. According to the October minutes:

> ...the main task of the Committee at this meeting was to give final consideration to its report to the National Lutheran Council on "The Use of Public Tax Funds for Non-Public Schools." It was agreed that some time should be reserved at the conclusion of the meeting to discuss the future work of the Committee.[1]

The two papers of Professor Erling were not discussed at the meeting, but had been sent to the committee members as a matter of information. They included critical comments on the position paper which had been sent to the Executive Committee of the National Lutheran Council the previous January, and an historical account of church-state relations in the United States, along with critical comments.

Before discussing the revised draft which had been prepared by Haas, two other related items were discussed. The first was the action of the American Lutheran Church at its Biennial Convention, October 18-24, and the second was the paper prepared by Professor Mattson.

It was noted that at the Biennial Convention of the American Lutheran Church that church body had adopted a statement dealing with the broader subject of Federal Aid to Church Institutions. Copies of this statement were passed out to the committee, and according to the Minutes the consensus of the Social Trends Committee was "that these documents complemented one another and were not in conflict."[1] This document is discussed later in this chapter. It is significant to note at this point, however, that Carl Reuss had been chairman of the committee which formulated the statement of the American Lutheran Church.

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[1] Minutes of the Social Trends Committee, October 26, 1962, p. 1.

The committee then turned to the paper of Professor Mattson for a brief discussion of the issues which were contained in it. The paper demonstrated that after almost two years of deliberation within a special inter-Lutheran committee, there were still strong differences on the issue. The minutes gave no details on the discussion which centered around Professor Mattson's paper, but the paper gave some insight into the differences which existed on the committee at the time.

In the opening paragraph of the paper Mattson gave his impression of how he has viewed the work of the committee:

> Attempts have been made in our deliberations to find justification for the use of tax funds for our church-related educational institutions. In many cases this involves "ex post facto" justification of what has already been practiced. What we need is guidance which will give direction to our attitudes and practices.[2]

The paper went on to state that the fundamental question which must be confronted is the broader issue of the relations of church and state. In addition, Professor Mattson seemed to think that the theological issue had been minimized and needed to be faced:

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[1] Ibid., p. 2.

[2] Ibid., Exhibit B, p. 1.

> Whatever may be said about a lack of theological principle for a solution of our problem with respect to details, we are not wholly without direction. Luther may not be a legalistic code for us in the twentieth century but his doctrine of "the two realms" does have something to say to our problem.[1]

From this point, Mattson made the case that both church and state, from a Lutheran theological viewpoint, are Divine institutions, although they have separate functions. The state is not to propagate the faith and the church is not to exercise temporal sovereignty.

> A church free from temporal control in the exercise of its function and a State free from hierachical (sic) domination is our ideal....I am just as afraid of the Church dominating the State as I am of the State interfering in the functions of the Church.[2]

Despite these strongly worded statements, however, Mattson made it clear that he was not talking about an absolute separation of church and state, for he saw the two realms interacting. If one is a Christian and a citizen, there is interaction by definition. With specific reference to the problem at hand, he said:

> A Christian citizen might also make use of funds derived from the government in functions within the framework of a religious institution. When such services might be granted by the government to the Christian citizen they should be granted to him as citizen. They ought not to be given to a religious institution which has been established and exists in order to

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[1] Ibid.

[2] Ibid.

propagate the faith.[1]

One final premise was laid down in the paper before the conclusion of his last paragraph. The premise had to do with the nature of church schools:

> Our church schools are today functioning with the avowed purpose of witnessing to the Christian faith. If this be not true than all the propaganda in connection with appeals for funds for our Church schools is a gross distortion of the truth. Unless our Church schools exist for this purpose it would be difficult to justify their existence at all.[2]

Given these premises, the problems of either the Church dominating the state or the state dominating the Church, and what Mattson saw as the purpose of church schools, his conclusions were predictable:

> This leads to the inevitable conclusion that tax funds should not be used to support Church Schools. If the Church wants schools - and the Church should sense its obligation here - the Church ought to support these schools. In the long run, it might prove to be a greater evil to have the State entering into the function of propagating the faith than it would be to see our Church schools die. I am not sure how meaningful our Church schools are as witnesses to the faith but if they should cease to exist our cause still is not lost.[3]

It was clear from a comparison of Mattson's paper with the final draft of the paper which the Social Trends Committee submitted the following February that the majority of the Committee did not share the viewpoint of Mattson. After a brief discussion of Mattson's paper, the committee moved on to an analysis of the revised draft of Harold Haas which had been sent out by Paul Empie in his October 15 letter to the committee. According to his letter he viewed the draft as the next to the last step in the completion of the assignment of the committee:

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[1] Ibid.

[2] Ibid., p. 2.

[3] Ibid.

> ...each member bringing with him proposed revisions... so that we can expedite the work, and...complete our assignment at this meeting....In substance, it has not changed materially from the former document.[1]

It is clear from a reading of the draft sent out to the committee that the judgment of Empie was correct. The document had not changed materially, but had been rewritten in a way which integrated the divisions of the former drafts of the paper, and which also attempted to deal with the five suggestions for change which had been made at the May meeting of the committee.

The rest of the day was given over to what the minutes call, "...a consideration of the text, line by line."[2] After the consideration of the text had been completed, Harold Haas was authorized to complete the editorial work where agreement had not been reached on specific rewording by the committee and the following motion was passed:

> That the Social Trends Committee transmit to the National Lutheran Council the statement entitled "Use of Public Tax Funds for Non-Public Schools" as revised at its meeting of October 26th in fulfillment of its assignment.[3]

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[1] Paul C. Empie, letter to Carl Reuss, October 15, 1962, (American Lutheran Church files, Minneapolis).

[2] Minutes of the Social Trends Committee, October 26, 1962, p. 2.

[3] Ibid.

The text, as presented to the National Lutheran Council, was divided into eight sections: Introduction; General Premises; Parents, Church and State All Involved; A Judgment on Current Options; Proper Safeguards Vital; Three Practical Observations: Practical Consequences of Public Assistance; Some Specific Applications. Although there were many editorial changes as a result of the October meeting and the final editorial work of Harold Haas, the final document was essentially the same as that which Haas had prepared prior to the October meeting, with some refining of the language. Although never adopted as an official paper by any Lutheran group, it was the only detailed paper published by Lutherans in the United States during the 1960's dealing specifically with the problem of public funds to church schools at both the elementary-secondary and higher education levels.[1]

The statement claimed to be one of three live options which can be elected in the solution of this problem. The first option would be no public funds for nonpublic educational systems or institutions of any kind. A second would be complete public funds for nonpublic educational systems. The third option which the paper considered to be the best option possible to serve the common good was:

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[1] Other position papers in the 1960's dealt with only one aspect of the problem as part of another problem (e.g., the American Lutheran Church statement of 1962), or with a broad question of church-state relations and only a small section devoted to part of this problem (e.g., the Lutheran Church in America statement in 1963 on Church and State). Both of these statements are considered later in this chapter under sections dealing with these two church bodies.

> Restrict the use of public funds to certain levels of non-public education on a precisely defined basis as such use is judged through the political process to be in the public interest.[1]

It is clear from a reading of the paper that its basic premise was neither constitutional nor theological. Rather it was the concept of the "public interest." This argument was used throughout the paper. In relation to education, for example, it was admitted that the limited and specified use of public money for church schools at any or all levels would tend to further the religious objectives of the sponsoring churches. Nevertheless, the statement argued as follows:

> It is our judgment that if such practice is truly determined to be in the public interest, the by-product of furthering religious objectives is not sufficient in itself to prohibit such practice.[2]

The statement further admitted that advantage would be created for some religious groups over others if such funds were available. This, however, would not be nearly so serious a problem at the higher education level as the elementary-secondary level.

In summary, then, the paper argued that there is a distinction between elementary-secondary education and higher education. In keeping with this distinction the paper argued against the use of public tax funds for elementary-secondary church schools in any manner that would serve to subsidize nonpublic schools and school systems. The only exceptions were health and safety measures, school lunch programs, and the claiming of tuition payments to such institutions as legitimate contributions to religious institutions for income tax deduction purposes. Bus transportation for church school students at public expense, which had been approved in the previous drafts, was not mentioned in the final form of the document.

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[1] National Lutheran Council, Annual Reports and Minutes, New York: Office of the Executive Secretary of the National Lutheran Council, February 5-7, 1963, Reports, Exhibit A, p. 4.

[2] Ibid., p. 10.

For higher education loans to students and loans to institutions for the construction of self-financing facilities were acceptable, while loans for buildings and programs directly and specifically used for religious purposes were not acceptable. Grants, including matching grants, which had been approved in the October, 1962 draft, were not mentioned in the final form of the statement.

It is clear from the minutes of the National Lutheran Council of February 5, 1963 that there were irreconcilable differences among the members of that body, who were in turn leaders and representatives of the American Lutheran Church and the Lutheran Church in America. George Forell of the Lutheran Seminary at Maywood, Chicago, presented the document and a lengthy discussion followed. The first question raised was whether the document was to be considered as a study document or a position paper. According to the minutes, "The consensus of opinion rested with the former characterization."[1] A suggestion was also made to receive the document and transmit it to the American Lutheran Church since the study had originally grown out of a request by the former Evangelical Lutheran Church. Fredrik Schiotz, president of the American Lutheran Church and formerly president of the Evangelical Lutheran Church, pointed out that at the October, 1962 convention of the American Lutheran Church, a statement had been adopted on the issue. An extensive discussion of the paper followed with objections being raised to at least nine sections of the paper. After lengthy discussion in which it was apparent that there was not consensus on the substantive matters in the paper, a motion was offered to postpone indefinitely. This motion failed, and the following substitute motion was accepted instead:

> That the National Lutheran Council receive the report of the Social Trends Committee on the "Use of Public Tax Funds for Non-Public Schools" and transmit it to the Participating Bodies for such use as they deem desirable.[2]

When one considers the purpose of the committee quoted earlier in this chapter from the first draft of early 1961, i.e., that the effort of the Committee was to develop a policy statement for the National Lutheran Council to commend to its participating bodies, the final motion of the National Lutheran Council in 1963 seems weak indeed. It was simply a report that the Social Trends Committee had completed working on an assigned project for which the Social Trends Committee was solely responsible. The differences of viewpoint were much too diverse to reach a consensus on this issue, and yet the National Lutheran Council acted to bring the study to a close. It is clear that there was divided interpretation about the theological and constitutional bases for the document. The action of the National Lutheran Council effectively killed the work of the Social Trends Committee on this issue. It seems clear, however, that the debates had found their way into the leadership of both the American Lutheran Church and the Lutheran Church in America. It had probably had no little effect on the Lutheran Church-Missouri Synod through the contacts of the committee with Oswald Hoffman.

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[1] Ibid., Minutes, p. 19.

[2] Ibid.

In its action the Council had decided to transmit the document to the churches "for such use as they deem desirable". When one looks at the official actions of the participating bodies, there is very little to report with reference to the action of the Council. By 1963 the participating bodies of the National Lutheran Council had been reduced to two with the merger of all its participants into either the American Lutheran Church or the Lutheran Church in America. The American Lutheran Church held its next biennial convention in Columbus, Ohio, in 1964, but took no action on the statement which had been "transmitted" to it by the National Lutheran Council. Instead, the statement was simply referred to in its "Reports and Actions" as follows:

> Also presented to the 1963 Annual Meeting was a lengthy study drafted by the Social Trends Committee on the subject "Use of Public Tax Funds for Non-Public Schools." The paper aroused lengthy debate since it deals with a highly controversial subject and ultimately was referred to the Participating Bodies for such use as they desire to make of it. Although the Council itself did not adopt it, the study and discussion produced a useful exchange of views by Lutherans at this stage of the national debate on the subject.[1]

The Lutheran Church in America met in Pittsburgh for its second Biennial Convention in 1964, but it took no action on the statement "transmitted" to it by the National Lutheran Council. Instead it simply reported:

> A 323-line-long draft statement of "The Use of Public Tax Funds for Non-Public Schools" was laid before the annual meeting by the Committee on Social Trends, to which an earlier version had been referred back one year earlier. After prolonged discussion revealing basic disagreements, the paper was received as a study document and transmitted "to the participating bodies for such use as they deem desirable."[2]

From the point of view of the "participating bodies", this was the end of the report. It was not officially referred to again in the succeeding biennial conventions. However, it is significant to note that while the Lutheran Church in America statement about basic disagreements was a correct assessment of the situation among Lutherans in the United States at that time, both the American Lutheran Church and the Lutheran Church in America adopted practices before the end of the 1960's which went beyond the statement of the Committee on Social Trends, and, within the same decade, both the Lutheran Church-Missouri Synod and the Wisconsin Evangelical Lutheran Synod did the same.

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[1] American Lutheran Church, Reports and Actions of the Second General Convention, Minneapolis: Office of the Secretary of the American Lutheran Church, 1964, pp. 534-535.

[2] Lutheran Church in America, Minutes of the Second Biennial Convention, Philadelphia: Board of Publications of the Lutheran Church in America, 1964, p. 268.

The Controversy Within The Four Lutheran Groups During the 1960's

With the exception of the Lutheran Church-Missouri Synod, the controversy over public funds to church schools was not discussed extensively within the official periodicals of the four church groups, except for the years 1962 and 1963. It should not be inferred from this, however, that the controversy was easily resolved or that there was general agreement on the issue outside the Lutheran Church-Missouri Synod. It is clear from the debate which was carried on in the Social Trends Committee that there was not consensus on the issue within the American Lutheran Church and the Lutheran Church in America. Further, each of the four church groups passed resolutions during the 1960's which showed that enough disagreement developed within that decade to bring about a significant change in position.

The American Lutheran Church

During the 1960's the American Lutheran Church adopted two significant resolutions, one on the specific issue of government funds to church institutions and the other on the broader issue of church-state relations.

At its first General Convention, the American Lutheran Church adopted a lengthy report from its "Special Committee on Federal Aid to Church Institutions." Under the chairmanship of Carl F. Reuss, this committee was composed of a rather broad spectrum of members of the newly formed church. In addition to Reuss, the committee included Paul Boe, Executive Secretary of the Board of Social Service of the American Lutheran Church; Milford S. Knutson, President of the Southeastern Minnesota District of the American Lutheran Church; Naurice Nessett, M.D., President of the Lutheran Institute of Human Ecology, Lutheran General Hospital, Park Ridge, Illinois; W.A. Poovey, Professor of Systematic Theology at Wartburg Theological Seminary; G.S. Thompson, Executive Secretary of the Division of Welfare Services of the National Lutheran Council; L.V. Rieke, Professor of Law at the University of Washington, Seattle; and Paul G. Kauper.

The report was not only concerned with public funds to church-related educational institutions, but with federal funds to all church institutions. The document was divided into seven sections, and gave general guidelines on the issue. After an introductory section which set forth the dangers of federal aid to church institutions, it distinguished between two types of aid, one a grant or a loan directly to the person, and the other a grant or a loan to an institution, whether directly or indirectly. According to the report both types of aid may involve problems of the relation of church and state and the distinction may at times be difficult, but the two types are unlike in their motivation and should be viewed differently. With reference to aids to persons the report stated:

> Federal grants or loans to persons we see as an investment in people and an exercise of the general welfare powers of the Congress. Examples are higher educational benefits for veterans, scholarships and fellowships for superior students.... Such programs are based on citizenship, residence, need, special service, or unusual ability of persons.... Church institutions have every right and freedom to serve, and to receive payments from, persons benefitting from such federal assistance. Indeed, to refuse to serve such persons would be an abdication of the church's responsibility. However, such aid ...should not be accepted to the extent that its curtailment or elimination would jeopardize the existence of the institution. Nor...to compromise or to subvert the religious character of the institutions.[1]

With reference to aids to institutions the report stated:

> We regard federal loans or grants...as presenting greater complications for both church and state than do direct aid to persons. We recognize, nevertheless, that federal funds have been appropriated and currently are available for colleges....We recognize, too, that institutions of the American Lutheran Church have accepted such funds for expansion of their program and facilities... the acceptance...may jeopardize their freedom.... We would protest were church-owned and church-related institutions excluded by legislation from federal programs designed to aid colleges....We insist that they should be eligible to participate in any programs of government assistance in these areas. Whether they do so or not should be their own choice.[2]

The rest of the document dealt with conditions under which aid is accepted, and cautions the institutions of the church against accepting government loans or grants which could jeopardize their freedom. Finally, it was suggested that the broader issue of church-state relations be studied in the future. What is most interesting to note with reference to the report is the absence of any mention of educational institutions at the elementary-secondary level. If the principles in the above quotations were developed, especially with reference to elementary-secondary schools, it would be a clear endorsement of the "child benefit" theory. This was not the feeling of the American Lutheran Church leadership at the time, however. On the following May, for example, Carl Reuss made it clear in an editorial in the "Lutheran Standard" that there was strong opposition to tax funds for church schools. Speaking of elementary-secondary schools he said:

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[1] American Lutheran Church, Reports and Actions of the First General Convention, Minneapolis: Office of the Secretary of the American Lutheran Church, 1962, p. 586.

[2] Ibid.

> Lutheran sentiment, it seems fair to say, is overwhelmingly opposed to any form of direct support for church schools from tax funds....We question free secular textbooks and bus transportation because we see these "benefits to parents and children" as merely disguised forms of direct aid to the church school.[1]

Reuss's judgment at that time was probably a fairly accurate assessment of Lutheran sentiment, but there were voices of opposition to this position as seen in the letters of response to the Social Trends Committee earlier in this chapter. Also, it was Reuss himself, in his November 24, 1961 letter quoted earlier in this chapter, who had pointed out that some of the leaders of the American Lutheran Church parochial school movement felt that the American public school movement had failed and other possibilities needed to be explored. It is reasonable to assume, then, that because of the strong differences within the church over this issue, federal aid to elementary and secondary church-related schools was considered too controversial an issue to try to include within the resolution of 1962. In Reuss's editorial noted above he made the same distinction between higher education and elementary-secondary education which had been part of the argument of the Social Trends Committee in its final statement presented to the National Lutheran Council in February of 1963.

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[1] Carl Reuss, "Tax Support for Church Schools?", The Lutheran Standard, Vol. 3 (May 7, 1963), p. 20.

Prior to the adoption of the resolution on Federal aid to church institutions in 1962, there had been no articles in the official periodical of the American Lutheran Church in the 1960's, except for a 1962 news release about public tax funds for parochial schools in Canada. During 1963 there was one article on the issue, and two editorials, including the one by Reuss discussed above. The only other article was written by C. Stanley Lowell, associate director of "Protestants and Other Americans United for Separation of Church and State", and it appeared in June, 1963. As would be expected, it was an article clearly against the use of public tax funds for parochial schools. It was written in the context of the school aid issue which was then before the 88th Congress, and in which the Roman Catholics wanted to have included aid to parochial schools.

The other editorial was published in July of 1963 by Edward Schramm, editor of the "Lutheran Standard". It was a response to an article by Robert M. Hutchins in the "Saturday Evening Post", in which Hutchins had advocated that $20.00 in tax money be paid annually to each school pupil in the state of New York, including those in Christian day schools. Schramm argued strongly against this position on the grounds that parochial schools have a strong religious purpose and that Hutchins' position would violate separation of church and state.

Also in 1963 two letters to the editor appeared, one agreeing with the Reuss editorial, and one agreeing with the Schramm editorial. There was also one letter that year pointing out that the nation already had public support of church institutions in one form or another.

Except for occassional news releases about the position of the Lutheran Church-Missouri Synod on the issue of public funds to church schools, there was only one article published in the "Lutheran Standard" on this issue after 1963.

In 1966, at the Third General Convention, an official statement on church-state relations was adopted which carried a reference about public funds for parochial schools. The background of this statement lay in an earlier resolution adopted at the Second General Convention in 1964. At that time the Joint Council of the American Lutheran Church brought to the convention a lengthy statement entitled "Church-State Relations in the U.S.A.", and recommended that it be circulated to the members of the church so that they could read it carefully and thoughtfully. The purpose given for the circulation of the paper among the members of the church was:

> ...in order to stimulate their thinking, to promote their discussion of the issues, to assist them in discharging their duties as Christian citizens, and to guide the boards, agencies, and institutions of the ALC in their corporate actions.[1]

The statement recognized the heritage of religious pluralism in the United States, and argued essentially from the Lutheran position of the two kingdoms. With reference to the specific issue of public funds for parochial schools, two explicit statements were made. Aids to the person which accrue to him as a citizen, should not be denied simply because he chooses to use the agencies of the church rather than the state.

> Old age assistance grants, medical payments, hot lunches, grants for dependent children, higher educational benefits, and health and safety education are examples of such benefits to persons.[2]

Public support for educational institutions under religious auspices, however, was considered to be a jeopardizing factor in terms of the religious freedom of those persons who are not members of the religious body which controls such educational institutions.

> We believe that to provide bus transportation or school textbooks at public expense for children enrolled in parochial schools...is contrary to good public policy.[3]

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[1] American Lutheran Church, Reports and Actions of the Second General Convention, Minneapolis: Office of the Secretary of the American Lutheran Church, 1964, p. 438.

[2] Ibid., p. 442.

[3] Ibid.

This statement was almost an exact quotation of the 1954 statement of the former American Lutheran Church which was quoted in the previous chapter. It also demonstrated agreement with the basic position of the Social Trends Committee, which had determined that it would make its case, not on theological or constitutional grounds, but on the basis of "the public good."

The resolution to commend the position statement to the churches was adopted in 1964, and at the 1966 Third General Convention the following resolution was adopted:

> Whereas, the statement on "Church-State Relations in the U.S.A.", commended by the General Convention of 1964 (Reports and Actions, page 439) has been widely circulated and favorably received; therefore be it Resolved, that the 1966 General Convention accept this statement as an expression of the policy and conviction of the American Lutheran Church on the issues treated therein.[1]

The resolution was adopted and the issue was ostensibly ended in the American Lutheran Church. From the time of the 1964 convention to the 1966 convention, no articles appeared in the "Lutheran Standard" on the statement commended at the 1964 convention. The American Lutheran Church had adopted a position of endorsing the use of public funds to nonpublic schools at the higher education level at a fairly broad level, but had adopted a fairly rigid position on the use of public tax funds for nonpublic elementary and secondary schools of the church. Even at this level, however, it did approve of some limited support if it was support to the student which accrued to him as a citizen.

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[1] American Lutheran Church, Reports and Actions of the Third General Convention, Minneapolis: Office of the Secretary of the American Lutheran Church, 1966, p. 51.

In July of 1967 an article appeared entitled "Creeping Parochialism". Its author was not named, but was identified as a public school administrator who had served in Michigan and Minnesota. The article was a scathing attack on the provisions for parochial schools in the 1965 "Elementary and Secondary Education Act." The author feared that the Act had moved the educational system of our country in a dangerous direction. Using the "wall of separation" metaphor, the author pointed out that:

> The wall separating church and state is crumbling. The latest and most serious blow to the constitutional principle of separation of church and state is President Johnson's Elementary and Secondary Education Act of 1965. We have only to look at the Netherlands and other nations that have compromised basic principles to see where the road of "creeping parochialism" can lead for public education.[1]

While the article argued strongly for an "absolute separationist" position, it seemed to fall on deaf ears. Not one letter to the editor or follow-up article appeared after the publication of this article. For all practical purposes the issue was dead in the American Lutheran Church.

The Lutheran Church in America

There is very little data in the official periodical of the Lutheran Church in America. Only two articles were written in the "Lutheran", and both of these were by Robert E. Van Deusen. In an article in the September 23, 1964 edition, he warned that church-owned institutions run serious risks by accepting government aid. The specific warning was directed to church hospitals and colleges. In his 1966 article he outlined the benefits of the "Elementary and Secondary Education Act of 1965", indicating that it "evolved a formula acceptable to both Roman Catholic and Protestant leaders."[1] After an analysis of the law, he ventured a guess about the future:

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[1] "Creeping Parochialism", The Lutheran Standard, Vol. 7 (July 11, 1967), pp. 2-3.

> What of the future?...we are already past the turn in the road....the public will feel at home with the idea that there is a double school system: public schools and parochial schools.[2]

The rest of the article predicted increased government control which would inevitably limit the freedom of the church. He saw the Roman Catholic Church as an important part of the development of the future, and the force which would finally cause the trend toward public aid for parochial schools to level off.

At both the 1966 and the 1968 Biennial Conventions of the Church, statements were adopted which touched on the issue of public funds to nonpublic schools. In 1966 the Church adopted a statement entitled "Church and State: A Lutheran Perspective." The study which provided the background for this statement was authorized in the 1964 Biennial Convention. The study made a distinction between "institutional separation" and "functional interaction". The

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[1] Robert Van Deusen, "Public Funds Aid Parochial Schools", The Lutheran, Vol. 4 (September 14, 1966), p. 13.

[2] Ibid., p. 15.

Lutheran view of the "two kingdoms" was evident in the introductory statement:

> ...the Lutheran Church in America affirms both institutional separation and functional interaction as the proper relationship between church and state. We hold that both church and state, in their varied organized expressions, are subject to the will and rule of God, who is sovereign over all things.[1]

The following definition of "institutional separation was given:

> By "institutional separation" we mean that church and state must each be free to perform its essential task under God. Thus we reject those theories of relationship which seek the dominance of either church over state or state over church.[2]

This idea was expanded further in the document, as well as the idea of "functional interaction", and specific statements were given as to the practical application of such "functional interaction." For example:

> The state...relates to the interests of the church in such ways as...4) acting on a nonpreferential basis in providing incidental benefits in recognition of the church's civil service which also makes a secular contribution to the community; and 5) acting on a nonpreferential basis in offering financial aid for educational or social services which church agencies render for the secular benefit of the community.[3]

At the 1968 Biennial Convention, the Board of Social Ministry recommended the adoption of a statement entitled, "The Church and Social Welfare". The statement was adopted and included an affirmation of particular significance to the question of public funds for church institutions:

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[1] Lutheran Church in America, Minutes of the Third Biennial Convention, 1966, p. 453.

[2] Ibid., pp. 453-454.

[3] Ibid., p. 454.

> When this church establishes social welfare programs it may properly enter into agreements with federal, state and local government to receive payment for services rendered or to accept, on a nonpreferential basis, grants or long-term loans.[1]

There was no specific reference to educational institutions, but it was clear that by this time the colleges related to the Lutheran Church in America were receiving benefits, including loans and grants provided in the 1965 "Higher Education Act".

By the close of the 1960's the Lutheran Church in America had developed a position similar to that of the other major Lutheran groups in the United States. Public funds were acceptable to church schools under certain conditions.

The Lutheran Church-Missouri Synod

The Lutheran Church-Missouri Synod was deeply involved in the question of public funds to church schools, particularly since it had the largest system of elementary-secondary schools among Lutherans in the United States. Many articles appeared in its periodicals, and at all four of its regular conventions during the 1960's resolutions were passed which related to this issue, and a significant change in position took place within the church.

In the earliest article in the 1960's Donald Holtse,

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[1] Lutheran Church in America, Minutes of the Fourth Biennial Convention, 1968, p. 193.

Principal of Grace Lutheran School in Indianapolis wrote that federal aid to parochial schools would not be "needed any more in 1970 than it was in 1870".[1] In March of the following year Arthur L. Miller, Executive Secretary for the Board of Parish Education, took a strong stand against federal aid to education in an article in the "Lutheran Witness."[2] In june of 1961 an editorial in the "Lutheran Witness" was given over to opinions on federal aid to church schools, particularly in the light of the Board of Parish Education statement of the same year against federal aid to parochial schools. All nine respondents in the editorial registered agreement with the statement of the Board or Parish Education.[3] One of the strongest articles written against federal aid to parochial schools appeared in October of 1961. It was the third in a series of articles on the general theme of separation of church and state. Claiming Scriptural and Confessional support, the article was unequivocally against federal aid to parochial schools. It was also strongly anti-Catholic in character.[4] These articles in the periodicals of the Lutheran Church-Missouri Synod indicated a strong agreement with the pre-1960 position of the Church.

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[1] Donald Holtse, "Federal Aid to Parochial Schools," Lutheran Education, Vol. 96 (December, 1960), p. 187.

[2] Arthur L. Miller, "Federal Aid to Education," Lutheran Witness, Vol. 80 (March 21, 1961), pp. 130-133.

[3] "Opinions on 'Federal Aid' to Church Schools," Lutheran Education, Vol. 96 (June, 1961), pp. 481-482.

[4] James G. Manz, "Federal Aid to Parochial Schools," Lutheran Witness, Vol. 80 (October 31, 1961), pp. 516-518.

At the 1962 Regular Convention of the church, the question of federal aid to church-related schools was brought to the floor in the form of a resolution. This resolution grew out of an opinion of the Board of Parish Education of March 21, 1961. At that time the Board had, in effect, reaffirmed the pre-1960 position of the Church on the question of public funds to parochial schools. The position of the Board was brought to the floor, and a resolution was passed which read in part:

> Resolved, that the Synod reaffirm its official position on state aid to non-public schools...that the Synod go on record as opposed to loans for the construction of church-related elementary and secondary schools...That the Synod approve the inclusion of payments of tuition as contributions on federal and state income tax returns... at the elementary or secondary level, in church-related schools...That the Synod go on record as opposing allowances for "tax credits" for the full cost of the school tuition...That the Synod urge all its members to study and evaluate legislation coming before the various state legislatures and the Congress with respect to state or federal aid to church schools and to take the proper action.[1]

This resolution was clearly in keeping with the pre-1960 position of the Church, and it also reflected complete agreement with the position of the Social Trends Committee at that time.

Before the next regular convention of the Missouri Synod was convened, a significant study had been published on church-state relations. Under the general editorship of Albert G. Huegli, Vice-President of Valparaiso University, this study grew out of the appointment, in 1955, of a Committee on Church-State Relations, by the Board of Parish Education. The Committee received approval from the Board of Directors of the church body to undertake the study, and held its initial meeting November 16-17, 1956 at River Forest, Illinois. The purpose of the committee was to reevaluate the Lutheran position of church-state relations, in light of the Scriptures and the Lutheran Confessions, and to address themselves specifically to "contemporary problem areas and emerging trends in political and social life."[1]

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[1] Lutheran Church-Missouri Synod, Proceedings of the Forty-Fifth Regular Convention, St. Louis: Concordia Publishing House, 1962, pp. 117-118.

By the end of 1962 the materials which had been prepared by the fifteen Missouri Synod scholars were ready for editing. After further revisions of the manuscript, the study was published under the title, "Church and State Under God." Of particular significance in the study is the fact that it maintained a position quite close to that of the Social Trends Committee. However, it was more of an historical survey than it was a position statement on church-state relationships. Nonetheless, it did mark the distinction between elementary-secondary education and higher education, and defended this position with the argument (among others) that indoctrination takes place much more readily at the elementary-secondary level. The study also took a clear position on the Lutheran concept of the "two kingdoms". One particularly important observation was made regarding the position of the leaders of the Lutheran Church-Missouri Synod:

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[1] Albert G. Huegli, Church and State Under God, St. Louis: Concordia Publishing House, 1964, p. 5.

> The Missouri Synod, for instance, has been committed for well over a century to the ideal of parochial schools. With only a few exceptions its responsible spokesmen have opposed any proposal for government assistance to its schools.[1]

This statement must be seen in the light of the distinction made between the social service program of the schools and the teaching program. Within this context it was an accurate assessment of the Lutheran position at that time, not only in the Missouri Synod, but also in the other two major groups of Lutherans in the United States.

Between the publication of this study, however, and the 1965 Regular Convention of the Missouri Synod, a marked change of position had come about within this group.

An indication of this change in position was seen in an article in "Lutheran Education" in the spring of 1965. In a radical departure from the position of 1961 advocated by the Board of Parish Education, Theodore von Fange, assistant professor and principal of the academy at St. John's College, advocated an entirely different point of view. He challenged the idea that education per se is the function of the state. He also challenged the idea that a single school system, the public school system, is best for a pluralistic society. Then he recommended that each parent be given freedom of choice as to where his tax money should go. In keeping with this, he further recommended that support money for local, state, and federal taxes be provided each school on a per pupil basis.[1] While this position was never adopted by the Missouri Synod, the article demonstrated that by the middle of the 1960's there were articulate Lutherans within the Missouri Synod who were advocating departure from the original 1941 statement of the Synod.

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[1] Ibid., p. 321.

At the 1965 Regular Convention a resolution was brought which moved away from the position taken in the resolution of the 1962 Regular Convention. This extensive resolution came out of the report of the Board of Parish Education. In its report the Board reviewed the policy statements of the Lutheran Church-Missouri Synod which had been adopted in 1944 and reaffirmed at its 1947, 1950, 1953, and 1962 conventions. After this review of the previous statements of the convention, a second section of the report, entitled "Federal Aid to Church-Related Schools in the Perspective of Recent Developments", points out that the Board has continued to study the issue since 1962. Because of new developments in the field of education the Board felt it wise to consider past statements on federal aid in terms of how adequate they now were for the plight of church-related schools. Out of the consideration of these past statements the Board came to several conclusions, among them:

> 1. With the rapidly growing federal involvement in education on all grade levels the validity of the once useful distinction between social services and teaching

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[1] Theodore von Fange, "Federal Aid: A Reconciliation", Lutheran Education, Vol. 100 (May, 1965) pp. 411-414.

> program in the application of the child benefit theory is coming into question....This...makes necessary a reappraisal of the statement on federal aid adopted by the Synod in 1962 and the earlier statement on state aid adopted in 1944.
> 2. Every school, both public and nonpublic, is faced today with the problem of the increasing cost of quality education....If nonpublic schools are to maintain quality education...it is essential that any federal aid for education be made available also to nonpublic schools.
> 3. Education at all levels is a public concern in our complex society....Substantial federal aid only to pulic schools may actually prevent the "free exercise of religion" and make impossible parental choice in the education of their children by forcing church-related schools out of existence.[1]

With this material as background, the report went on to make several recommendations, the substance of which was embodied in Resolution 7-03. This resolution, adopted by the convention, read in part:

> Whereas, the Lutheran Church-Missouri Synod is grateful to God and the nation for the precious privilege of religious liberty...which guarantees the right of private and parochial schools to exist; and...Whereas, the nation has always considered private and parochial schools as part of her educational resources; and Whereas, the basic aim of the federal government is to equalize educational opportunities...and Whereas, should federal aid which the government offers be declined, the children attending...parochial schools would be deprived of educational opportunities...and Whereas, Federal aid offered to all children attending public, private, and parochial schools would undergird for parents the "free exercise of religion"...and Whereas, Children attending nonpublic schools have in the past received benefits from the federal government through the local parish school with increased advantage to the child...RESOLVED, That federal aid for children attending nonpublic schools, as authorized by the Congress and defined by the courts, be deemed acceptable so long as it does not interfere with the distinctive purposes for which such schools are maintained; and...That synodical and district officials be requested to explore with appropriate

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[1] Lutheran Church-Missouri Synod, Convention Workbook of the Forty-Sixth Regular Convention, St. Louis: Concordia Publishing House, 1965, p. 292.

> government officials the availability, utilization, and administration of federal funds on an equitable basis for children attending nonpublic schools...[1]

Although this resolution became the official position of the Lutheran Church-Missouri Synod, it is clear that the position was not, by any means, a unanimous one. When the vote was taken, it passed by only 291 to 252.

At the same convention Resolution 6-44 was adopted which had come from the Board of Stewardship and Finance. It embodied a recommendation from the Faculty and board of control of Concordia Teachers College in River Forest, Illinois, and read in part:

> RESOLVED, That the Lutheran Church-Missouri Synod and its Boards of Education shall not reject proposals for financial aid to its educational institutions because such aid has its source in tax funds, but shall consider each such proposal on its own merits and in the specific interests of the school or schools involved.[2]

In the fall of the same year, following the Regular Convention of the Church, Arthur L. Miller published an article in "Lutheran Education" indicating that there was a loosening up in the Synod on the issue of public funds to parochial schools. He also intimated that there had been a change in his own position from that which he had held in 1961.[3] This is evident when one compares his 1961 article in the "Lutheran Witness" with the 1965 article in "Lutheran Education."

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[1] Lutheran Church-Missouri Synod, Proceedings of the Forty-Sixth Regular Convention, St. Louis: Concordia Publishing House, 1965, pp. 153-154.

[2] Ibid., p. 152.

[3] Arthur L. Miller, "Federal Aid for Nonpublic Education in the Light of the Elementary and Secondary Act of 1965", Lutheran Education, Vol. 101 (November, 1965), pp. 118-125.

By the time of the next Regular Convention in 1967, an overture had been prepared to rescind the 1965 Detroit resolution. This overture was brought to the floor from the resolutions committee in the form of a motion to decline the overture to rescind. The resolution to decline the overture read as follows:

> WHEREAS, The Detroit synodical convention in 1965 deemed federal aid acceptable for children attending nonpublic schools; therefore, be it RESOLVED, That the convention decline Overture 6-74 U, which requests that we rescind the Detroit resolution.[1]

The resolution to decline was apparently not so closely fought as Resolution 7-03 of the 1965 convention. The close vote of 1965 is recorded as a standing vote with the number of votes recorded. The 1967 resolution is recorded as adopted. The resistance to federal aid had apparently begun to die in the Missouri Synod, and its acceptance in parochial schools had become the prevailing practice in the Missouri Synod. William Kramer, secretary for the schools of the Synod, quoted from the 1967 report of the Board of Parish Edcuation to substantiate this fact:

> Some congregations have resolved against aid for their children, but the great majority seem willing to accept it under terms of the Synod's resolution and of federal legislation.[2]

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[1] Lutheran Church-Missouri Synod, Proceedings of the Forty-Seventh Regular Convention, 1967, p. 135.

[2] William Kramer, "Federal Aid to Parochial Schools", Lutheran Education, Vol. 103 (November, 1967), p. 142.

The controversy was not completely dead, however, even though a new prevailing position seems to have been clearly established by 1967. Two memorials came to the convention in 1969 which indicated that there was still resistance to the new position. The first memorial was rather mild and seemed to reflect a position that since aid was being accepted, due caution should be exercised in its acceptance. In this regard the Southern District of the Church included in its memorial the following statement:

> RESOLVED, That we express our opposition to any form of public support that might in any way infringe upon or jeopardize this right and responsibility...[1]

The other memorial came from Concordia Lutheran Church in San Antonio, Texas, and was an unequivocal demand for the rejection of all government funds, from a Biblical and confessional point of view:

> WHEREAS, There is evidence that there are those who would desire financial assistance which is contrary to our established Confessions and Scripture, thus confounding civil authority and church authority; therefore RESOLVED, That the Lutheran Church-Missouri Synod assembled in convention, recommend rejection of all financial support by our government which is directed to its Christian day schools.[2]

While it is true that these two memorials were not a significant part of the convention, they did demonstrate caution on the part of some members and strong disagreement on the part of others.

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[1] Lutheran Church-Missouri Synod, Convention Workbook of the Forty-Eighth Regular Convention, 1969, p. 360.

[2] Ibid., p. 367.

Another resolution was brought to the convention in 1969, however, which indicated that more study had been given to this issue. The background for this resolution was a study by the Board of Parish Education, a summary of which was contained in the Convention Workbook of the forty-eighth Regular Convention of the Church. One of the most significant statements in the report is the basic premise which is laid down regarding the question of public aid for church schools:

> Whether or not to seek and accept public aid is a matter to be decided by good practical judgment; it is not a doctrinal issue....In accepting aid, a congregation commits itself to vigilance to make sure that acceptable conditions continue.[1]

This statement is particularly significant when one considers that the Lutheran Church-Missouri Synod comes out of a strongly confessional background, and has had a traditional position of concern for the doctrinal implications of its actions. It is all the more significant when one considers that it was the Board of Parish Education which had commissioned the study which resulted in Huegli's book, "Church and State Under God". It was pointed out earlier that the committee appointed to do this study had had as its purpose the reevaluation of the Lutheran position of church-state relations, in light of the Scriptures and the Lutheran Confession. Yet, by 1969 it was considered "not a doctrinal issue". Two other events had taken place in the Missouri Synod during the 1960's however. First, it had severed its relations with the more conservative Wisconsin Evangelical Lutheran Synod when the latter group withdrew from the old Evangelical Synodical Conference. Second, the Missouri Synod had joined with the American Lutheran Church and the Lutheran Church in America in the formation of the Lutheran Council in the United States of America in 1967. These events may have contributed to a less rigid position in the interpretation of the Confession, or they may have been themselves signs of the movement toward a less rigid position.

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[1] Ibid., p. 346.

The extensive 1969 statement of the Board of Parish Education on "State and Federal Aid for Nonpublic Schools" indicated a careful study of a very complex problem. It began with a statement on the changing attitudes in our society, and in the church, on the issue:

> Nationally, more legislators and citizens find some form of public aid for church-related schools acceptable. Some prestigious educational leaders have made public statements favoring it....Legislators frequently change opposition to support when church-school representatives state clearly the case for support of church-related schools. In the Church the Conference of Education Executives in December 1968 passed an unequivocal resolution asking the Board of Parish Education and District boards to take a more aggressive stance in seeking public aid.[1]

The statement went on to point out who the chief opponents to public aid are, what federal benefits were presently available, and what state aid was presently available. In this regard it was pointed out that a number of states would consider legislation to provide aid to students in church-related schools, and that in 18 states bus transportation was available to children in nonpublic schools under varying terms. The report then raised a word of caution that aid ought not be accepted without a careful understanding of the terms under which it is being accepted, and the implications to the school under those terms, particularly in the light of the stated purpose of the school as part of the work of the church.

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[1] Ibid., p. 354.

The report went on to indicate that the Board had been actively in contact with government officials in this matter, sometimes in cooperation with other religious groups. The last section of the report developed a rationale for public aid to church-related education, and was divided into three parts, "Reasons for Seeking Public Aid", "Areas for Exploration", and "Activities". Out of this study Resolution 7-05 was passed at the 1969 convention. It read in part:

> WHEREAS, The Detroit Convention declared federal aid for children attending nonpublic schools acceptable, "so long as it does not interfere with the distinctive purposes for which such schools are maintained"...; and WHEREAS, Children in nonpublic schools have already benefitted from federal and state government programs without sacrificing the above-stated principle...RESOLVED, That the convention reaffirm its 1965 Detroit resolution 7-03...and...That Synodical, District, and congregational boards of education actively promote and, where possible, help to shape legislation which is acceptable in terms of the Detroit resolution...and...That these boards continue to inform their several constituencies of available public aid benefits.[1]

One other resolution was passed at the 1969 convention which is significant to this study. It further indicated the change in attitude concerning public funds for nonpublic schools:

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[1] Lutheran Church-Missouri Synod, Proceedings of the Forty-Eighth Regular Convention, 1969, p. 133.

> WHEREAS, Federal and state aid in higher education to public and to private institutions is now a matter of well-established policy in the United States; and
> WHEREAS, Our synodical schools are not receiving as much such aid as they perhaps might; therefore be it
> RESOLVED, That the Board of Higher Education be directed to study and assess this matter and submit a report to the 1971 convention.[1]

This resolution, which was adopted, had come out of a recommendation of the faculty of Concordia Junior College in Bronxville, New York.[2]

By the end of the 1960's the Lutheran Church-Missouri Synod had joined the other major Lutheran groups in the United States in a general stance of the acceptance of public funds for church schools.

The Wisconsin Evangelical Lutheran Synod

The Wisconsin Synod was the last of the four groups under consideration in this study to change its position. In the early part of the 1960's, however, it held strongly to an "absolute separationist" point of view.

At its 1961 church convention a resolution was passed regarding the development of a statement on federal aid to church-related schools.

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[1] Ibid., p. 109.

[2] Lutheran Church-Missouri Synod, Convention Workbook of the Forty-Eighth Regular Convention, 1969, pp. 331-332.

> Resolution No. 3
> Subject: Federal Aid to Parochial Schools
> WHEREAS, The matter of federal aid to parochial schools is receiving much public attention, and
> WHEREAS, Members of our Synod are looking to the Synod for guidance; therefore, be it
> RESOLVED, That we recommend that the conference of Presidents formulate a statement on federal aid to church-related schools for the information of the constituency of the Synod.[1]

At its 1963 church convention a lengthy statement was brought back to the delegates in response to the 1961 resolution. Entitled, "Statement Re Federal Aid to Church Related Schools", the statement indicated that education is an activity in which the home, the church and the state (all divinely appointed institutions) all have an interest. The home is primary among these, however. Nevertheless:

> Christian parents often cannot meet the high standards set by God in His Word and so may rightfully turn to the church for assistance in such Christian training. Christian education in the broadest sense is also the task of the church. Not only is the Church extended thereby, but through it, it is preserved.[2]

The state also shares a legitimate concern in the welfare of children. This was the historic position of Luther. According to the Scriptures, however, the education of the children "in the nurture and admonition of the Lord" and in matters of the children's spiritual and eternal welfare is the obligation of Christian parents and the church, who possess the means of Grace in the home and the Christian school.

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[1] Wisconsin Evangelical Lutheran Synod, Proceedings of the Thirty-Sixth Regular Convention, Milwaukee, Wisconsin: Northwestern Publishing House, 1961, p. 112.

[2] Wisconsin Evangelical Lutheran Synod, Proceedings of the Thirty-Seventh Convention, 1963, p. 123.

> God never intended the state to be the educator of our children in this respect. It is the protector of our health and physical safety and the preserver of peace and order....It...may also find it necessary to train and educate, but the State...should not encroach upon the functions of Christian parents or of the Church in their God-given responsibility to train the young in things spiritual.[1]

The statement ended with a strong position against public funds to church schools on the grounds of the political position of separation of church and state, as well as a theological commitment to what was taken to be their God-given responsibility:

> ...we neither want nor request the assistance of the State in carrying out our educational endeavors. We hold that such assistance invites the intrusion of the State into an area not assigned to it by God, and that such assistance also violates the constitutional principle of separation of Church and State, using tax monies gathered from all citizens for the promulgation of a specific religion or faith....furthermore...we would thereby be yielding to the State the direction and control in the training of our children.[2]

The resolution to adopt this report is significant because of its claim for Scriptural support of the position taken:

> ...Whereas, This statement reflects sound Scriptural principles, therefore be it
> Resolved, a) That the "Statement Re Federal Aid to Church-Related Schools" be endorsed by this convention as the official position of the Wisconsin Evangelical Lutheran Synod, and be it further
> Resolved, b) That the board for Information and Stewardship be requested to publish the "Statement..." for distribution within each congregation.[3]

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[1] Ibid., pp. 123, 124.

[2] Ibid., p. 124.

[3] Ibid., p. 141.

The question of government aid to church schools did not come before the Synod again until its 1967 Convention at Saginaw, Michigan. At that time the question came to the Convention out of the report of the Advisory Committee on Education. This report indicated that a good deal of the Committee's time had been devoted to the consideration of rapidly increasing programs of government aid to education. As a result the committee had undertaken an extensive study of the principles involved in church-state relationships, and the implications for government aid to church schools. The result of this study, in the form of an extensive statement on church-state relations, was appended to its report, along with a supplemental statement regarding government aid to church schools. Both the statement on church-state relations and the supplementary statement on government aid indicated a marked change in position from the 1963 statement. The change was similar to that taken by the other three Lutheran groups.

In the statement on church and state, the Lutheran position of the "two kingdoms" was carefully explained and several conclusions were drawn:

> There is not necessarily a mixture of state and church when both participate in one or the same endeavor but each participates in this endeavor only in the sphere of its own function and restricts itself to its own means....there is a wide realm of contacts in church and state relations which...are not in themsemves necessarily a confusion of church and state. Nevertheless,...actions and decisions in just this realm call for very cautious and discerning judgment in order that...neither the interests of the church

or of the state may actually suffer.[1]

This statement was clearly a change in position from the 1963 statement on church and state. The supplementary statement on governmental aid reinforced the above statement:

> ...one would be hard-pressed to state categorically that all government aid per se is wrong or contrary to the clear teachings of Scripture....We believe it to be the better policy to avoid governmental aid dealing with grants or loans for facilities, at least until the Supreme Court has reviewed their constitutionality.... The most pressing need at the moment...is a...study of state and federal aid which benefits directly the individual student-citizen....It goes without saying that there is need for exercizing considerable caution.... As individuals we must be careful not to confuse Scriptural principles and our individual political beliefs. As a Synod we must be careful not to be guilty of adopting a political philosophy.[2]

The resolution which came out of this study endorsed the statement of the Advisory Committee on Education as being based on Scripture. A second resolution set up guidelines which were to be followed in the acceptance of any government aid to church schools:

> 1) avoid any aid that would hinder our Christian schools from carrying out their objectives,
> 2) avoid any aid that would lead to dependency upon the government and would undermine our Christian stewardship,
> 3) avoid any aid that would bring with it improper government control, and
> 4) avoid any aid that would jeopardize our unified Christian education.[3]

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[1] Wisconsin Evangelical Lutheran Synod, Proceedings of the Thirty-Ninth Convention, 1967, pp. 172, 173.

[2] Ibid., pp. 173,174.

[3] Ibid., pp. 186,187.

At its 1969 Convention at New Ulm, Minnesota, the Synod adopted a resolution reinforcing the decision of 1967. It read, in part:

> Whereas, Our Synod's Board of Education has sent out information on current legislation with regard to government aid to parochial schools; therefore be it Resolved, a) That we commend the Board of Education for providing such information, and be it further Resolved, b) That we urge that such pertinent information continue to be made available.[1]

Wisconsin had chosen to go the way of its larger Lutheran neighbors, and by the end of the 1960's had opened the doors to government aid to its church schools. Almost no debate had gone on in its periodical on the issue.

Other Inter-Lutheran Statements And Actions

During the first half of the 1960's at least four inter-Lutheran groups dealt with the question of public funds to church schools, although on a more limited basis than had been done in the Social Trends Committee of the National Lutheran Council. These inter-Lutheran groups included representatives from the American Lutheran Church, the Lutheran Church in America, and the Lutheran Church-Missouri Synod.

The Association of Lutheran College Faculties

The Association of Lutheran College Faculties was begun by the American Lutheran Conference as annual conferences among colleges and seminaries within that group. It held its first conference in 1936, but was not officially organized until the fall of 1947 at Gustavus Adolphus College in St. Peter, Minnesota. By the fall of 1948 a constitution had been drafted which was adopted at the October meeting at St. Olaf College in Northfield, Minnesota. The newly formed organization was expanded to include colleges and seminaries which were to become part of the Lutheran Church in America, plus Valparaiso University. Its purpose was to provide a forum for the discussion of educational issues, to strengthen the educational programs of the various member institutions, and to conduct research in higher education.[1]

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[1] Wisconsin Evangelical Lutheran Synod, Proceedings of the Fortieth Convention, 1969, p. 123.

By the time of the October, 1961 meeting the membership had grown to include colleges from the Lutheran Church-Missouri Synod, as well as additional colleges from the churches which were the predecessors of the Lutheran Church in America. The theme for the 1961 annual conference was "The Lutheran College and 'The Wall of Separation'", and the speakers included faculty members from all three of the Lutheran groups whose colleges and seminaries held membership in the conference.

In the editorial of the journal, Oliver Graebner's suggestion to its recipients held an insight into the seriousness of the issue, probably far beyond what anyone could have known at the time. It could well be taken as a preview of what was yet to come in the decade of the 1960's:

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[1] Journal of the Association of Lutheran College Faculties, Vol. I (1948), passim.

> While the subject is perhaps of more immediate interest to college administrators, boards of directors and business managers, who must deal more directly with the pressing problems of rising enrollments, higher costs, and physical plant expansion, it is of interest also to all who live and breathe that rare and privileged atmosphere, the college campus, from instructor to departmental chairman.... May we suggest that you mark the cover of this copy of the Journal so that it will be readily located on your book-shelf as a reference on that difficult but pressing problem faced by all private and especially church-related schools — what view shall we take regarding Federal assistance to private education?[1]

Eight papers were read at the conference. Unfortunately the address of President Clarence Stoughton of Wittenberg University, entitled "Why the Government Should Care About the Private Colleges", was not printed in the Journal. The papers that were printed in the journal can be roughly divided into four groups. The first three papers dealt with different perspectives from which one could view Federal Aid to higher education. The next paper was a survey of the present status of federal aid to private higher education by a guest speaker from the history department at Carleton College. The next two papers dealt with the problem of government aid to higher education in other countries. The last paper was presented by Professor Paul G. Kauper of the University of Michigan Law School. Professor Kauper was both a specialist in the area of constitutional law and an active layman in the American Lutheran Church. His contribution is particularly significant, since he was on the committee which drafted the October, 1962 statement of the American Lutheran Church on Federal Aid to Church Institutions, and was also a guest consultant for the National Lutheran Council Social Trends Committee at its May, 1962 meeting dealing specifically with the use of public tax funds for nonpublic schools.

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[1] Oliver E. Graebner, "Editorial", Journal of the Association of Lutheran Faculties, Vol. 12 (December, 1961), pp. 4-5.

Perhaps the most significant aspect of this 1961 meeting of Lutheran College Faculties, was the fact that none of the participants took a "strict separationist" point of view with reference to the issue of federal aid to higher education.

James Savage, Professor of Law at Valparaiso University, took the position, for example, that the question of central importance in the issue of federal aid to church related higher education was, "...how much is too much?"[1] The rest of his paper was given over to exploring the problem of how federal aid laws are passed, administered, and adjudicated.

Paul Sonnack, Professor of Theology at Augsburg in Minneapolis, dealt with the subject, "The Wall of Separation Breached", and took a clear position against any "strict separationist" view. He began by pointing out that he intended to define a perspective in terms of which it is possible to look at the whole problem of federal aid to education. He did not want to direct the focus of the paper exclusively to higher education alone. His own peculiar interest had been in relation to the public school. He began to set this perspective with an evaluation of the practice of religious liberty in America:

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[1] James S. Savage, "Aid to Religious Education and the Federal Administrator", Journal of the Association of Lutheran Faculties, Vol. 12 (December, 1961), p. 7.

> To be as candid about it as I can, I must tell you right at the outset that many of the strident voices raised in defense of the separation of Church and State today do not greatly impress me. This is the case because it is my opinion, whether we like it or not, that we do now in fact have an established religion here in the United States where no establishment is supposed to exist.[1]

Professor Sonnack went on to defend this contention by pointing out that Jefferson and his colleagues, out of a Deistic position, envisioned a society in which a common core of beliefs would be taught by all churches. The churches did not, however, take seriously enough their obligation to teach this common core of beliefs essential to the existence and well-being of the American society. Thus the public schools took this function over by default, and the beliefs taught in the public school system are roughly equivalent to what is often called "the democratic faith."

> But does this not mean that there is in point of fact an "establishment of religion" in America? In a sense the state in its public school system has always been teaching "religion." The "wall of separation" has long since been breached....If the foregoing is true, then I am not alarmed and unduly concerned when in the present situation the question of federal aid to private and parochial schools is raised.... I do not see that federal aid to parochial schools will of itself breach the "wall of separation." At the very most, it might widen somewhat the breach that already exists. But that might only serve to redress a situation that is already out of balance. It is within the framework of such considerations that I see few dangers in

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[1] Paul G. Sonnack, "The Wall of Separation Breached", Journal of the Association of Lutheran Faculties, Vol. 12 (December, 1961), p. 10.

federal aid to higher education.[1]

The position of Professor Sonnack is all the more interesting when seen alongside the position taken by President John Stensvaag of the Lutheran Free Church in his April 21, 1961 letter to Benjamin Gjenvick. President Stensvaag was extremely critical of aid to parochial schools in almost any fashion, and indicated that he felt his view was shared by a large portion of the membership of the Lutheran Free Church. Professor Sonnack was professor of theology at the official college of the Lutheran Free Church. The polarity of these two positions showed the sharp disagreement on this issue at this time. It also seems to point to a situation where the theologians of the church were at a position of sharp disagreement with the church leadership. As noted earlier in this chapter, Warren Quanbeck had had the same sharp disagreement with George Schultz and Fredrick Schiotz of the American Lutheran Church. George Forell, theologian at the Lutheran Church in America Chicago Theological Seminary, had the same kind of disagreement with Franklin Fry, President of the Lutheran Church in America.

The third paper delivered at the December, 1961 meeting was by Harold H. Lentz, President of Carthage College of the United Church in America (later the Lutheran Church in America). His paper was by-and-large a defense of federal aid to education on prudential grounds. Nevertheless he did attempt to give a general framework as grounds for the acceptance of public funds:

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[1] Ibid.

> Historically, there is a merging of interests on the part of the state and our Lutheran Church because our church has seen the value of education, has developed and sustained it. We find a particular merging of interests in a democracy....Democracy is based upon an educated citizenship....And simply because democracy is based on a literate, intelligent citizenship, therefore democratic states should cooperate with and support higher education. At this point a church committed to education and a democracy based upon it become real, not imagined partners in this important aspect of public life.[1]

The longest paper at the meeting was read by Paul Kauper. In dealing with the question of the constitutionality of low-interest federal loans to church-related colleges he made very clear what he meant by church-related colleges:

> Let me say at this point that when we are speaking about church-related colleges I think we know clearly what they mean when we speak about our own Lutheran church colleges where the institutions are viewed in a very real way as institutions of the church designed to serve the whole mission of the church in bearing witness to the Christian Gospel, where an important part of the task of the college is to train men for the ministry and for other full-time church occupations as well as to train all persons in an environment that stresses Christian motivation and Christian values. In this sense our church colleges are religious colleges and the concern about religion as an integrating force in the whole educational process is as important here as it is in any parochial school where schools operate under auspices of the church.[2]

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[1] Harold H. Lentz, "The Lutheran College and the Federal Grant", Journal of the Association of Lutheran Faculties, Vol. 12 (December, 1961), p. 15.

[2] Paul G. Kauper, "The Constitution and Federal Aid to Private Higher Education", Journal of the Association of Lutheran Faculties, Vol. 12 (December, 1961), p. 41.

In the rest of the paper, Professor Kauper went into a detailed analysis of constitutional questions, and pointed out that, in his judgment, the federal government has both the right to give aid to education and the right to give aid to private higher education. Then he focused on what he took to be the critical question for the church:

> This brings us to the critical questions that are raised particularly in respect to federal assistance for educational enterprises conducted under the auspices of the church where religion plays an important part in the curricular program and total objectives.[1]

In explicating this "critical question", Professor Kauper pointed out that some aid has been given based upon one of three theories: the theory of fringe-benefits; the theory of student aid; and the public welfare theory, which Kauper calls the "concurrence of function" theory. This latter theory maintains that there are some functions which were historically carried out by the church which are now being carried out by the government. The government's coming into the picture is no reason for the church to give up its work in this area of public welfare. Hospitals are the prime example, and Hill-Burton funds for hospitals (including church-related hospitals) are, in a sense, the paradigm case of government funds for public welfare programs carried on by the church as well as the government. Finally, Kauper pointed out that there was some basis for marking a distinction between church-related elementary-secondary education on the one hand, and church-related higher education on the other hand. Because of this latter distinction, it did not follow, in Kauper's mind, that the constitutional grounds for giving aid to church-related higher education were sufficient grounds for giving aid to church-related elementary-secondary schools.

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[1] Ibid., p. 53.

The position of Kauper is particularly significant in the controversy over public funds to nonpublic schools because of his influence in the development of three important studies in the early 1960's. First, he was involved as a guest consultant with the Committee on Social Trends of the National Lutheran Council during its study of this issue. Second, he was on the special committee of the American Lutheran Church which drafted its 1962 statement on government aid to church institutions. Finally, he was a member of the special commission of the Lutheran Church in America which worked from 1961 to 1963 to develop the position booklet, "Church and State: A Lutheran Perspective." It is clear that his influence, particularly on constitutional questions, was no small factor in the developing position of Lutherans during the 1960's.

As a general evaluation of the 1961 meeting of the Association of Lutheran Faculties, it can be reasonably concluded that there was a clear movement away from a strict "wall of separation" position among a significant group of Lutheran educators early in the 1960's.

The LCA Special Commission On Church and State

On March 27-28, 1961, at the invitation of the Board of Social Missions of the United Lutheran Church in America, a group of twenty-two Lutheran scholars representing the professions of law, education, theology, social welfare and church administration met in New York City to consider the matter of a special study on church and state relations. The group concluded that the time was right for such a Lutheran study, and that:

> the approach should be one of dialogue, the nature of which is to continue, understanding that the last word has not been and will not be spoken, and that the effort should seek to provide guide lines, rather than answers, for the resolution of concrete issues as they arise.[1]

In July, 1961, the Executive Board of the United Lutheran Church in America authorized the Board of Social Missions to appoint a commission to undertake a study on church and state relations in a pluralistic society. A nine-member commission of persons from the United States and Canada was appointed. The group held two meetings in 1962, and when the United Lutheran Church merged with three other Lutheran groups in 1962 to form the Lutheran Church in America, the group was reconstituted under the auspices of the Board of Social Ministry of the newly formed Lutheran Church in America. It was officially called the "Commission on Church and State Relations In A Pluralistic Society." The commission included the following persons: Conrad Bergendoff, Executive Secretary of the Board of Theological Education of the Lutheran Church in America; George W. Forell, Professor of Religion at the State University of Iowa (formerly, Professor of systematic theology at Chicago Lutheran Theological Seminary); Paul G. Kauper, Professor of Law at the University of Michigan; J. Martin Klotsche, Provost, The University of Wisconsin; William H. Lazareth, Professor of Systematic Theology at Lutheran Theological Seminary in Philadelphia; Arthur C. Piepkorn, Professor of Systematic Theology at Concordia Seminary in St. Louis; Warren A. Quanbeck, Professor of systematic theology at Luther Theological Seminary in St. Paul; Theodore G. Tapper, Professor of Church History at Lutheran Theological Seminary in Philadelphia; William J. Villaume, President of Waterloo Lutheran University in Ontario, Canada. Staff assistance was given to the Commission by Rufus Cornelsen, Secretary for Civil and Economic Affairs of the Board of Social Ministry of the Lutheran Church in America. Kauper and Quanbeck were from the American Lutheran Church, and Piepkorn was from the Lutheran Church-Missouri Synod. All of the members of the commission, with the exception of Kauper and Klotsche, were Lutheran clergymen. During the years that this commission was preparing its 1963 statement on church and state, Cornelsen, Forell, and Quanbeck served both on this commission and on the Social Trends Committee of the National Lutheran Council. The study produced by this commission of the Lutheran Church in America, then, was an inter-Lutheran document, although the commission was officially constituted by the Lutheran Church in America.

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[1] Lutheran Church in America, Church and State, A Lutheran Perspective, Philadelphia: Board of Publications of the Lutheran Church in America, 1963, p. i.

The commission met twice in 1962 and twice in 1963 and in 1963 published the document entitled "Church and State, A Lutheran Perspective." The document was divided into an introduction and two major parts. In the introduction a particular point of view emerged, which was similar to that seen in the Social Trends Committee and the Association of Lutheran College Faculties:

> Most often the relationship of church and state has been seen in static thought patterns: namely state rule of the church, church rule of the state, or the "wall of separation" doctrine. No static or absolutist interpretation is adequate for today. The phrase "separation of church and state" has become the symbol of the American approach to this question. While it has never been applied in a rigid or absolute fashion, there is considerable confusion and uncertainty about what it actually means in the present pluralistic situation. The issue defies complete and precise formulation. Nevertheless it is intelligible and can be dealt with in a positive and constructive way. Such is the premise and hope of the present study.[1]

The first major part of the document dealt with the general concept of a pluralistic society, and was itself divided into three chapters. The first chapter dealt with historical European and North American backgrounds in church-state relations. The second chapter dealt with the development of an unofficial protestant "Establishment" in the United States, and the decline of that establishment, leaving a new and different social scene of religious tensions.

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[1] Ibid., p. viii.

In addition it pointed out how the country had moved from a social setting of "localism" to "nationalism". The third chapter dealt with the constitutional aspects of religious pluralism. It showed the historical connection between the first and fourteenth amendments, and the subsequent propensity of the courts to make more binding on the state and local scene matters which had formerly been interpreted to be strictly for the federal government. It went on to deal with the complicated problems which inhere in the first amendment with its "free exercise" clause on the one hand, and its "no establishment" clause on the other hand, as well as the whole question of why the first amendment adds to its statement of general freedom of speech, the additional comment on religious liberty. In bringing this section to a close the study summarized the positions of religious groups in the United States, indicating that the Protestant churches have been divided on this issue. Characterising churches in the Baptist tradition as champions of a strict application of the separation idea, it pointed out that the confessional churches have taken a less rigid stand:

> But recognition of the problems posed by contemporary pluralism now forces these latter groups to re-think their position in relation to many specific problems involving government relations. The basic question is whether in response to changed conditions the confessional churches feel compelled both in principle and as a matter of strategy in meeting Catholic claims and demands to adopt a strict separatist position with its emphasis on voluntarism and the complete abstention by the state from any programs or practices that are seen to offer any comfort or aid to religion. Certainly they need fully to explore the implications of this position before completely identifying themselves with it. In any event it is clear

> that religious pluralism presents a challenge to fresh and critical thinking in the churches both on the basis of their theological presuppositions and in regard to the meaning of religious freedom and the basic postulates and objectives underlying the separation principle.[1]

The second part of this position paper was entitled "An Evangelical Response", and was itself divided into two chapters. The first of these chapters, entitled "Biblical Witness", dealt with an understanding of the nature of the Biblical witness and the centrality of the Lordship of Christ in the Church. The second of these two chapters was entitled "Ethical Guidelines", and was an attempt to come to grips with the Lutheran concept of the two kingdoms, or a Lutheran understanding of the relation of church and state, with some specificity about the responsibilities of each. This was done by dealing with three subheadings, "Sacred Secularity", "Church and State: Institutional Separation", and "Church and State: Functional Interaction."

There is a difference between "sacred secularity" and "godless secularism." Since both the church and the state are ordained of God, the Christian is expected to be in the world, but not of the world. Thus, the Christian does not condemn and scorn the world of "Caesar". On the contrary, he actively participates in the affairs of the world as a responsible Christian citizen.

Having made this point about "sacred secularity", the paper went on in the next section to point out that the church and state are institutionally separate insofar as each has a distinct mission. To summarize the mission of the church, the paper stated:

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[1] Ibid., p. 26.

> As an ecclesiastical institution, its distinctive mission is to proclaim the Word of God in preaching and sacraments, worship and evangelism, Christian education and social ministry.[1]

The state's mission is equally clear:

> In summary, the distinctive mission of the state is to establish civil justice through the maintenance of law and order, the protection of constitutional rights, and the promotion of the general welfare of the total citizenry.[2]

The last section of the chapter dealt with the ways in which the church and state interact functionally, and listed ways in which each relates to the other. This concluding section listed five ways in which the church relates to the interests of the state, and five ways in which the state relates to the interests of the church. The last of these is of particular interest to this study, inasmuch as it attempted to establish some guidelines for public funds to church institutions.

> Fifth, the state relates to the interests of the church by providing financial aid on a nonpreferential basis to church agencies engaged in the performance of social services which are also of secular benefit to the community.[3]

In further clarifying this last position, the paper closed with a warning that while aid may be legal, it may not be socially desireable or ethically advisable. In each case the church and its agencies must decide:

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[1] Ibid., p. 37.

[2] Ibid., pp. 39-40.

[3] Ibid., p. 46.

> (1) if the integrity of the church's witness requires that the church itself pay for a given service, or
> (2) if the church may accept funds from the state for such a service, or
> (3) if the church considers that a particular service is the peculiar responsibility of the state alone. Prudentially, of course, any institution of the church that is the recipient of such public funds must face the fact that it takes the risk of being subject to government direction if it becomes financially dependent upon governmental financing.[1]

While somewhat ambiguous in terms of the exact limitations which should be set on public funds to church institutions, the document did, nonetheless, present a carefully argued position which is quite similar to that of the Social Trends Committee of the National Lutheran Council.

At the 1964 Convention of the Lutheran Church in America it appeared that the Commission on Church and State would continue its study. According to the minutes:

> The commission is currently concentrating on church and state problems in the area of education. Included here are the subjects of the use of public funds for nonpublic schools, the teaching of religion in a secular program of education and the "shared time" proposal. It is possible that writings may result from this effort that the board will publish in the future.[2]

While this seemed to be a promising beginning for the commission, it was not to continue. At the 1966 Convention the Board of Social Ministry reported:

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[1] Ibid., p. 47.

[2] Lutheran Church in America, Minutes of the Second Biennial Convention, 1964, p. 475.

> ...the board resolved to dismiss its own Commission on Church and State Relations, which had on it three members of other Lutheran church bodies, and to seek means to implement continuing basic long-range studies of church and state relations under some official inter-Lutheran auspices.[1]

The writings concerning the use of public funds for nonpublic schools, as well as other topics suggested at the 1964 Convention, had not materialized. This in no way minimizes the importance of the commission, however. It had provided a forum for an important topic, and part of the work was adopted by the Lutheran Church in America in 1966 as the official position of that body. In addition it had helped to sharpen the focus of an important question among Lutherans in the United States.

The National Lutheran Educational Conference

The 1962 and 1964 meetings of the National Lutheran Educational Conference both touched on the issue of public funds to church schools. Although no formal resolutions regarding federal aid to higher education were passed at either of these meetings, the papers presented demonstrated that by 1964 a marked change in position had taken place since the 1958 meeting of the conference.

At the 1962 meeting Albert G. Huegli, Vice-President for Academic Affairs at Valparaiso University, presented a paper entitled "Church and State in Education As A Protestant Sees It." Huegli's paper was particularly significant because it attempted to present a general position on the issue within a theological framework, and because it had marked similarities to the general position developed within the Social Trends Committee of the National Lutheran Council. It was divided into three sections, the first entitled "Theological Presuppositions."

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[1] Lutheran Church in America, Minutes of the Third Biennial Convention, 1966, p. 513.

In the first section, Huegli developed the Lutheran position of the "two kingdoms" under three presuppositions. First, both the church and the state are the instruments of God. Second, each has its own sphere marked out for it. Third, there is a constant danger in church-state relations that the sphere of church and state will be confused.

The second section was entitled "American Principles", and indicated that in the United States a peculiar pattern of church-state relationships had been worked out centering upon three fundamental principles, namely religious liberty, pluralism, and cooperation. Within this framework he pointed out how religious liberty had led to the development of many religious groups in this country, and out of this there had developed government cooperation with religion.

> Governmental cooperation with religion becomes very tangible in some instances. Salaried chaplains in legislative halls are commonplace. The chaplaincy program for the armed forces and in penal institutions, subsidized by the government, is taken for granted. Clergymen are exempted from Selective Service requirements. Church properties are not subject to taxation.
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> But cooperation is a two-way process. The churches are expected to work with the government. They are regarded as corporate entities in the eyes of the law. They own and dispose of property. They work with government in social welfare and educational

> undertakings. Their ministers render legal services in performing marriages. They collect Social Security taxes for their employees.[1]

In the last section of his paper, Huegli dealt with what he called "Presuppositions, Principles, and Education." There he pointed out that the closer one comes to the application of principles of church-state relations to educational problems, the more heated the discussion becomes. Nevertheless, Huegli concluded that if the theological presuppositions of church-state relations were applied to the issue, and the basic principles of the American pattern were recognized, four conclusions would follow. First, one must recognize that education is a matter of concern both to the church and to the state. Second, one must recognize that religious education is the responsibility of the church, not of the state. Third, government financial aid to church schools creates serious difficulties for the operation of the American pattern. In this section he gave some account of the historical development of government aid in the late 1950's, and went on to make the judgment that:

> Aid to church colleges may have some justification in the American pattern because of certain differences between education at this level and at the elementary and secondary levels.[2]

The arguments used in support of this position were the very ones used within the study of the Social Trends Committee of the National Lutheran Council. The fourth conclusion Huegli made was that the state must not be given the opportunity to exceed its prescribed role and weaken the function of the church.

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[1] Albert G. Huegli, "Church and State in Education As a Protestant Sees It", Papers and Proceedings of the National Lutheran Educational Conference (January 7-9, 1962), p. 49.

[2] Ibid., p. 53.

The significance of Huegli's paper in 1962 was that, although not an official pronouncement of the National Lutheran Educational Conference, it did represent a movement toward more openness to government aid at the higher education level. It is also significant that Huegli was vice-president of a university closely related to the Lutheran Church-Missouri Synod. This indicates that there was developing a similarity of viewpoints among some of the leaders of all three of the major Lutheran groups in the United States at that time.

At the 1964 meeting two papers were presented which dealt specifically with the problem of public funds to church-related institutions of higher education, and two were presented which dealt with the broader question of church-state relationships.

The two papers on church-state relationships in general were presented by Karl E. Mattson, President of Lutheran School of Theology, Rock Island Campus (formerly Augustana Theological Seminary), and George W. Forell, Professor of Religion at the State University of Iowa (formerly Professor of Systematic Theology at Chicago Lutheran Theological Seminary at Maywood). Both of these papers developed the Lutheran position of the "two kingdoms", and attempted to show that a rigid position on church-state relations is an inadequate position, both theologically and in terms of the present social situation. Mattson did this by examining the role of the Christian college in this question, and Forell did it by looking at the larger question of church and government in a paper entitled, "Some Observations on Church and Government." The significance of Forell's paper is seen in the fact that he was a former member of the Social Trends Committee of the National Lutheran Council, and deeply involved in the development of that committee's study of public funds to nonpublic schools. He was, in a sense, the theologian of the Lutheran Church in America on that committee, just as Warren Quanbeck was the theologian of the American Lutheran Church. Forell had also served on the inter-Lutheran commission on church and state which had been commissioned by the Lutheran Church in America. The central focus of Forell's paper was an attempt to show that:

> ...in the Western cultural tradition which developed in Europe and America over the past 2000 years, we are all personally and individually, as well as socially and collectively, involved in both the religious and the political communities. These two communities are, however, in our tradition both "distinct" and "interdependent". Thus any solution which denies the distinction falsifies the situation, but so does any solution which obscures the interdependence.[1]

From this premise, Forell went on to point out that there are two such solutions involved in our Western tradition. The first is the simple identification of the political and religious communities, and the second is the position of a

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[1] George Forell, "Some Observations on Church and Government", Papers and Proceedings of the National Lutheran Educational Conference (January 11-13, 1964), pp. 17-18.

"wall of separation" between the religious and political communities. Each of these positions, according to Forell, was equally inept. In place of these two positions Forell suggested a third:

> Following a suggestion of Fr. Walter J. Ong, S.J., I would advocate the human solution of "conversation" or "dialogue". The tensions between the two communities ought to be seen as the tensions between partners in an ongoing and vital discussion. It takes place on at least two different levels. It is a dialogue within each person and thus involves self-analysis. We have to ask ourselves individually, what does my membership in these two communities mean to me? There is no permanent or final answer to this question. The answers must and will be given every day anew in the context of our daily life in both communities.[1]

Forell concluded by indicating that neither the church nor the state must press for final solutions, but in the tentative solutions reached, respect must be shown for the integrity of both the church and the political community, but most of all respect "of the human **persons** who constitute them and therefore should always be open to change."[2] This position of Forell was clearly in harmony with the underlying position expressed in the study of the Social Trends Committee of the National Lutheran Council.

The two other significant papers presented at this conference were by Ernest V. Hollis, Director of College and University Administration of the U.S. Department of Health, Education, and Welfare, and Edgar M. Carlson, President of

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[1] Ibid., p. 18.

[2] Ibid., p. 19.

Gustavus Adolphus College. The paper of Hollis was essentially a review of the development of federal participation in higher education, with some suggestion to the proper direction of higher education. Carlson's paper was a response to Hollis and showed a significant change in attitude toward public funds to church-related colleges. In referring to previous debates, resolutions, and opinions of Lutherans on the issue of public funds to church-related colleges, Carlson said:

> Many of us would recognize a change in our own reactions, which is in part the result of changed circumstances in the larger arena of government and church programs, and in part, no doubt, the response to permissive legislation which makes it expensive to hold some of our earlier "purist" views.[1]

He was quick to point out, however, that the change in position was not one over which Lutherans ought to be cynical. It was not merely a matter of yielding to prudential considerations. The concept of separation of church and state is not a theological matter. Rather it is an American principle and, as such, may be altered by the American people at their discretion. While we might have some ideal conception of the kind of world we prefer, we must still be cognizant of the actual realities of the situatin which confronts us. Thus, while we may prefer a situation of no public aid to private education, this simply may not be possible.

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[1] Edgar Carlson, "Some Comments on Publicly and Privately-Supported Higher Education", Papers and Proceedings of the National Lutheran Educational Conference (Jan. 11-13, 1964), p. 25.

> When a general program of support for higher education from tax sources has been established, the only way to achieve maximum justice, even with reference to the principle of no established church, may be to see that funds raised by taxes for nonpublic institutions are distributed to the respective denominational institutions in approximately the same ratio as they are raised from the respective denominational constituencies.[1]

It was clear that by 1964 a well articulated position had begun to emerge among Lutheran educators and theologians which was not in keeping with a strict "wall of separation" position in the matter of public funds to nonpublic schools.

Inter-Lutheran Consultation On Church and State Relations

The last study of the question of public funds to nonpublic schools on an inter-Lutheran basis in the 1960's took place November 20-21, 1964 in Minneapolis. This meeting was perhaps the most significant contribution to the eventual establishment in 1967 of the Lutheran Council in the United States of America, a Lutheran Cooperative Body which replaced most of the work of the National Lutheran Council and brought into its membership the Lutheran Church-Missouri Synod, as well as the former members of the National Lutheran Council. It was hoped that this consultation would pave the way for future discussion of the broader topic of church and state, as well as the more specific topic of public funds to nonpublic schools on an inter-Lutheran basis. Inter-Lutheran consultations and the work of the Lutheran Council in the United States of America, after 1964, moved into other areas of interest.

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[1] Ibid.

At the 1964 Inter-Lutheran Consultation on Church and State Relations there were representatives of the American Lutheran Church, the Lutheran Church in America, and the Lutheran Church-Missouri Synod, representing a wide variety of positions both inside and outside their respective church bodies. Some of the members of the consultation already mentioned earlier in this chapter were Carl Reuss, George Forell, W. Kent Gilbert, Robert E. Van Deusen, Rufus Cornelsen, William Villaume, William Lazareth, Paul Kauper, Arthur Piepkorn, Howard Hong, and Albert Huegli.

Others in attendance were Richard J. Niebanck III, Secretary for Social Concerns of the Lutheran Church in America; Fred W. Meuser, Professor of Church History at the Evangelical Lutheran Theological Seminary at Columbus; W. A. Poovey, Professor of Systematic Theology at Wartburg Theological Seminary; Martin E. Marty (Lutheran Church-Missouri Synod), Professor of Church History at the University of Chicago and Associate Editor of "Christian Century"; William Ellis (Lutheran Church in America), Lutheran layman and attorney; David Schuller (Lutheran Church-Missouri Synod), Assistant Director of the American Association of Theological Schools; Walter F. Wolbrecht, Assistant to the President of the Lutheran Church-Missouri Synod; Gerhard Lenski, Jr. (American Lutheran Church), Professor of Sociology at the University of Michigan; and Miles C. Stenshoel, Professor of Theology at Augsburg College in Minneapolis. The broad spectrum of backgrounds of these members of the inter-Lutheran consultation was an indication of both the significance of the meeting as representative of Lutheran leadership, and of the concern for the issue shown in the three major groups of Lutherans in the United States at that time.

The purpose of the consultation, as stated in the minutes of the meeting was threefold. These purposes were delineated as follows:

> (1) To review studies and statements by TALC, LCA and Missouri on church-state issues
> (2) To isolate areas of consensus and divergence, and
> (3) To focus upon problem areas of further exploration.[1]

After a review of the positions taken by the three groups, the rest of the first session was given over to questions and a discussion of the implications of the positions of the churches. The afternoon session resulted in the raising of some important questions which related directly to the wording of the various documents. The discussion continued in the evening session and attention was focused on the following specific topics: separation and free exercise; the meaning of "church"; legal and theological framework; the state and its philosophical self-understanding; pluralism, secularization, and natural law; and changed thought forms for changing conditions. The session ended with two final questions being posed:

> Will federal aid to parochial schools necessitate a rewriting of the churches' statements on the

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[1] Minutes of the Inter-Lutheran Consultation on Church and State Relations, November 20-21, 1964 (American Lutheran Church files, Minneapolis), p. 2.

> subject? Does the stance outlined in the LCA study differ from that which underlies the ad hoc statements of TALC?[1]

At the next morning's session several points were made about the positions of the three church groups on church-state relations. While it was agreed that there were shades of differences in the three church groups, and differences in the character of the statements of the church groups, it was nonetheless agreed that in terms of what the state properly does for the church, "There does not seem to be any basic disagreement among the three church bodies."[2]

While there was a general consensus among the participants at the consultation regarding the agreement of the three church bodies, there was also consensus that other important questions needed to be answered. In addition, there was the interesting comment in the minutes about the separation of church and state which read as follows:

> "Separation of church and state" is an issue of rapidly diminishing importance. In an urban, corporate society, the question is no longer, "What can the church co...? but "What can anyone do in the task of rehumanization? The emphasis is necessarily shifting from "separation" to "cooperation".[3]

This statement seemed to represent some general consensus among the participants of the consultation, and thus, is quite significant in getting some idea of the general position held among Lutheran leaders at that time.

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[1] Ibid., p. 6.

[2] Ibid., p. 7.

[3] Ibid.

Later in the day attention was drawn to some issues which, according to the thinking of those present, demanded immediate attention. One of these is of central importance to this study:

> Money for schools, both parochial and private. The situation is different now because such money is likely to be made available quite soon and because, without such aid, parochial and private schools will have to make some serious cutbacks. Protestants have hitherto ignored the Roman Catholic argument (that education is the proper responsibility of parents, not the state, and that aid to parents who choose public education but not to those choosing to exercise their duty through the church is an abridgment of the latter group's rights) probably because of latent (or not-so-latent) anti-Catholicism.[1]

The significance of this statement was not that it represented an authoritative judgment on the psychological motives of Protestants in the United States in terms of their attitude toward Roman Catholics, but that it was the judgment of a large group of Protestants of one particular denomination that there may indeed have been such latent motivation within American Protestantism.

The remainder of the sessions included the raising of questions on public funds to church schools, as well as other matters which related to the broader question of church-state relations. No formal motions were passed on the question of public tax funds for church schools, but the consultation did show that there was far more openness to public tax funds for church schools than had been the case at the close of the 1950's. It was agreed at the close of the meetings that one or two more structured consultations should be planned, and this effort would keep the concern alive until the effort could be taken over by the new Lutheran Council in the United States of America. Unfortunately, although there were other inter-Lutheran consultations, none of them was devoted to the topic of church-state relations.

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[1] Ibid., p. 8.

Robert E. Van Deusen who had opposed public funds to nonpublic primary and secondary education in his 1961 testimony before a House Subcommittee on education, in March of 1965 published an article in "The Lutheran National". In his article he reviewed recent developments which had taken place in church-state relations and ventured a projection concerning the shape of the future. His projection about public aid to church schools was particularly significant:

> There will be a growing tendency on the part of church agencies and institutions to accept financial aid from the government. The thesis that socially valuable services by church groups should receive public tax support, advocated by the Roman Catholic Church, will gain wider acceptance from the general public. Many Protestant institutions will yield to the trend and seek a share in the public subsidy, especially in the field of welfare and education.[1]

The comments of Van Deusen are particularly significant when one reads his entire testimony to the House Subcommittee in 1961. His testimony then was clearly against any kind of aid, and he also indicated at that time that he felt the general view of most Lutheran leaders was against public aid to church institutions in general. His March, 1965, article was in a much more conciliatory tone, and he stated in a commendatory way his final conclusion on church-state relations:

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[1] Robert E. Van Deusen, "A Look At Past and Future In Church-State Relations", The National Lutheran, Vol. 33 (March, 1965), p. 17.

> As a valuable contribution to church-state relations, Protestant churches will cooperate with the Roman Catholic Church in seeking a "middle ground" between a State which ignores its religious roots and one which pre-empts the role of the Church in guiding the religious life of the people.[1]

This statement, when taken within the context of the entire article, represented a very different stance from that which he had taken in 1961 when he went to Washington to argue against the Roman Catholic position of seeking aid to their parochial schools through federal funds.

Lutherans In The 1960's

Several things emerge from an examination of this controversy in the 1960's. First it is clear that there has been a significant shift in position in the thinking of Lutherans in the United States on the issue of public funds to church schools. This was seen both in the official statements of the four church bodies as well as their practice. Even parochial schools in the American Lutheran Church, which spoke officially against bus transportation or school textbooks at public expense for parochial school children, now accept aid in these two areas as a matter of practice.

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[1] Ibid.

Second, in all four groups there was an attempt to address the question both theologically and philosophically. There was some vascillation, however, in the area of theological considerations. It seemed appropriate occasionally to indicate that there was no doctrinal or theological issue involved. On the other hand, there were genuine efforts to come to grips with a contemporary understanding of the historic Lutheran confessions.

Third, there seems to have been some correlation between conservative theology and reluctance to change positions, with the Wisconsin Evangelical Lutheran Synod the very last group to change. It would be difficult, if not impossible, however, to show that there was a causal relationship between these two factors.

Finally, it would appear that the question of the relative contribution of the clergy and the educator in change and/or resistance to change in the controversy is not a significant question. It is clear that the educators were deeply involved in bringing about the change, but the vast majority of these educators were members of the clergy as well. Thus the question loses its significance for the study.

CHAPTER FIVE

AN EVALUATION OF THE LUTHERAN CONTROVERSY OVER PUBLIC FUNDS TO CHURCH SCHOOLS

Chapter four of this study began with the assertion that the single most significant study by Lutherans in the United States on the issue of public funds to church schools took place in the Social Trends Committee of the National Lutheran Council during the years 1960, 1961, and 1962.

By the time the work of the committee had been completed on the question of public funds to church schools it had touched the leadership of close to 95 percent of Lutheranism in the United States. This was true even though the Lutheran Church-Missouri Synod was not a participating body in the National Lutheran Council. Nevertheless, there was an interchange of letters with Oswald C.J. Hoffman, Director of Public Relations for the Lutheran Church-Missouri Synod in May of 1961. In addition, Hoffman had been a guest consultant at the May 18-19 1962 meeting of the Social Trends Committee, invited with others to confer on the position paper being developed by that Committee. Of the four groups under consideration in this study, only the Wisconsin Evangelical Lutheran Synod was not in contact with the Social Trends Committee of the National Lutheran Council during the years that it studied the question of public tax funds to nonpublic schools.

The Missouri Synod position of 1962, the American Lutheran Church position of 1962, and the Lutheran Church in America position of 1963 were all in virtual agreement with the final statement of the Social Trends Committee, although none of these three groups had developed a statement which covered both elementary-secondary and higher education.

The study of the Social Trends Committee was the only study conducted by Lutherans during the 1960's which dealt solely with the question of public tax funds to nonpublic schools, and which dealt with the question at both the elementary-secondary level and the higher education level. Even though never officially accepted as a policy statement by any Lutheran group in the United States, it had effectively opened the door in Lutheranism to a new look at the question of public tax funds for nonpublic schools. When the committee presented the final draft of its statement, Lutherans in the United States in general approved of very limited funds for nonpublic schools. The position was considered to be in keeping with historic Lutheranism and in the common good. By the end of the decade, however, the prevailing position among Lutherans in the United States had gone far beyond the recommendations of the Social Trends Committee, and there was a general acceptance of the funds which had been made available through the two major Congressional Acts of 1965, namely the Elementary-Secondary Act and the Higher Education Act.

It is interesting to note that the resolutions and other statements of the Lutheran groups examined in the previous chapter often attempted to avoid both the theological and the constitutional questions which were so vitally related to this issue. Instead, in one form or another the churches often chose to argue from the notion of the "common good". What is particularly strange about this sort of argument is that the groups chose to argue from the notion of the "common good" in order to avoid the problem of appealing to some general principle. In the long run, however, it seems clear that the "common good" argument was itself an argument from a particular general principle to which the various groups turned as a basis for the acceptance of public funds to church schools. When one argues from the basis of the "common good" there is at least an implicit appeal to the utilitarian tradition in philosophy, and the appeal is at least implicitly a moral appeal. It seems clear that the proponents of this argument among the Lutherans in the United States during the 1960's simply did not always give careful attention to this matter. I am not here arguing against the utilitarian appeal to the common good. I am only pointing out that the failure to see it as a fundamentally moral stance philosophically is a serious error. It would seem that from a Lutheran point of view it is a serious error theologically. If the Lutheran Church is a confessional church as it claims to be, it is a strange thing to turn away from the appeal it might make out of its confessional statements, and to turn instead to an appeal from what might be considered "secular" philosophy.

Not only did the Lutherans often attempt to avoid a general principle (and become enmeshed in an implicit one by so doing), but their attempt often to avoid the theological question which lay beneath the issue led them to a particularly contradictory position in this regard. In the last chapter the statement was often made that there was "no valid theological concern which would be helpful in deciding the position which is to be taken."[1] What is so ironic about this statement is the fact that the positions which finally were taken by the various Lutheran groups by the close of the 1960's were rooted and grounded in theological presuppositions and arguments.

In the first place, for example, in almost every instance some attention was given to the prior rights of parents in the education of their children. For the church this is fundamentally a theological commitment, and it is important for the church to state this clearly when making such appeals. The problem arises when Lutherans make statements indicating that there is no theological issue involved in the question of public funds to church schools, and then appeal to a theological position of the prior rights of parents in the education of their children. When a non-Lutheran (or even a Lutheran layman for that matter) reads these statements within the total context of the statements which were published, the implication seems to be that since there is no theological issue involved, there must be some other basis for appealing to the prior rights of parents in the education of their children. This raises the further question, "What non-theological arguments could one use as a basis for arguing that parents have prior rights in the education of their children?" There is no tangible empirical evidence to which one can appeal showing that parents have prior rights in the education of their children. One could argue, of course, that there are empirical grounds of a biological nature. That is to say, the children come naturally into the sphere and control of the parents by birth. Therefore they are biologically related to the parents in such a way as to give the parents prior rights in their education. On further examination, however, it can be seen that even this kind of argument is a theological argument based upon some notion of "natural law." Such a notion is at least open to question. I am not here arguing, however, that theological notions of "natural law" are demonstrably false. I do insist, however, that appeals to the prior rights of the parents in the education of their children are fundamentally theological appeals, and they are not appeals which lend themselves to empirical verification. This is not to say that only appeals to empirical verification will count in such claims. On the contrary, it is only to point out that the argument about prior rights when made by the church is fundamentally a theological argument. For Lutherans it is rooted in the Confessional statements of the church and the Biblical tradition of the Reformation. Of course, it might be argued that when one claims that parents have prior rights in the education of their children, the appeal is a kind of an appeal to "property rights". That is to say, since the children come to parents via biological processes they are the possessions of the parents, much as one's ear is his possession. The very statement of such a position shows its absurdity for the church which does not view human beings as possessions of other human beings. The point of demonstrating the absurdity of such an argument is to demonstrate further that whatever appeals the church might make to the prior rights of parents in the education of their children are appeals to theological commitments of the church. Thus to deny an appeal to theological principles and to appeal to another principle which is itself theological, is a self-contradictory position.

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[1] This was the explicit statement quoted in the last chapter from the March 29-30 minutes of the Social Trends Committee. Similar statements were made subsequently in relation to the statements of the other groups studied here.

It was not only the arguments of the prior rights of the parents, however, which contradicted the Lutheran denials that the issue is a theological or doctrinal one. Of even more significance is the fact that in almost every instance which was looked at in the last chapter, careful attention was given to the Lutheran doctrine of the "two kingdoms" as found in the writings of Luther, and in the confessions of the church, especially the Unaltered Augsburg Confession. In a summary statement within the statement adopted by the Lutheran church in America in its 1966 Biennial Convention it was pointed out that:

> ...the Lutheran Church in America affirms both institutional separation and functional interaction as the proper relationship between church and state. We hold that both church and state, in their varied organized expressions, are subject to the will and rule of God, who is sovereign over all things.[1]

The explanation given to this statement in both the 1966 statement adopted at the Biennial Convention of the Church and in its earlier publication of 1963 was an explanation rooted and grounded in the Lutheran confessions. Furthermore, it was the position, in one form or another, which was used in virtually all of the statements of the churches and the inter-Lutheran groups to defend the position which they had taken. I do not here attempt to refute the theological arguments used by the Lutherans to defend some forms of public tax funds for nonpublic schools. I simply point out that it is contradictory and self-defeating to attempt to maintain that no doctrinal or theological issues are involved, and then to build one's argument for public tax funds to nonpublic schools on doctrinal or theological grounds.

A second problem which arises in an analysis of the Lutheran position of "institutional separation" and "functional interaction" is that, while they have attempted to refrain from constitutional questions, they have come at the constitutional question in an oblique way via the theological concepts of "institutional separation" and "functional interaction". It is granted that the development of these concepts in the argument by Lutherans is quite a different matter from attempting to give a legal judgment on the meaning of the law. Nevertheless the argument certainly attempts to develop a position compatible with what its advocates took to be the meaning of the Constitution, and to develop a theologically consistent position not contradictory to the First Amendment.

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[1] Lutheran Church in America, Minutes of the Third Biennial Convention, 1966, p. 453.

In attempting, then, to develop an argument based on the "common good", the Lutherans nevertheless did not avoid making theological judgments about the problem of public tax funds to church schools, nor did they avoid dealing with the question of constitutionality. It is true that many Lutherans did not try to avoid the theological and constitutional questions in this issue. Perhaps it could even be said that none of them "tried" to avoid the theological and constitutional questions. It is a matter of record, however, that in some important instances (e.g., the Social Trends Committee of the National Lutheran Council and the 1969 position of the Lutheran Church-Missouri Synod) the theological issue was judged to be not relevant. It is also a matter of record that in some instances (e.g., the Social Trends Committee) it was urged that the constitutional question be left to the legal experts. From this historical development it can at least be inferred that the theological and constitutional bases for the position of Lutheranism in the United States were unclear in some instances, and that there was no clear-cut consensus among Lutherans regarding the theological and constitutional bases for the position which developed among them during the 1960's.

Another problem is seen in an analysis of this Lutheran controversy of the 1960's. It relates to the Roman Catholic position of the right and responsibility of the parents in the education of their children. The Roman Catholic position has been extensively elucidated by Pius XI in his encyclical "Christian Education of Youth". William F. Cunningham, Professor of Education at Notre Dame, cites this work and draws the following conclusions from it:

> In its practical application this doctrine means that the supernatural right of the Church is made effective through the exercise of the natural rights of the parents, under the guidance of the Church. This is the problem discussed in works presenting the ethics of Aris-Thomistic philosophy. The priority of the rights of the parent is established over those of the state on the principle that the family itself is prior to the state. The end of the state is the protection and welfare of individuals and families. If all states were destroyed through universal anarchy, individuals and families would still exist and they would bring forth a new state to safeguard their well-being. Hence the rights of the state in the education of children are secondary to those of the parents.[1]

In looking back through the arguments of the prior rights of parents by the Lutherans in their official pronouncements in the 1960's, it is clear that their arguments are similar to the Roman Catholic argument, and these Roman Catholic arguments may be basic to the Lutheran position on this issue.[2]

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[1] William F. Cunningham, The Pivotal Problems of Education, New York: The MacMillan Company, 1940, p. 521.

[2] Lutherans would argue for the supremacy of the Scriptures in such issues, while the Roman Catholic Church would argue for the supremacy of the Church.

These arguments of the prior rights of parents must certainly be considered an important contributing factor in the change of position among Lutherans in the 1960's. The prior rights position, however, did not develop among Lutherans suddenly in the 1960's. It has always been a part of their Biblical and Confessional tradition. Yet, prior to 1960, when the argument was used by Roman Catholics for public funds to church schools, it was not usually taken seriously by Lutherans. Some of the comments in the previous chapter of this study indicate that at least some Lutherans saw this as evidence of "latent (or not-so-latent) anti-Catholicism."[1] It is true that such inferences are difficult, if not impossible to establish on the basis of an historical study. Nevertheless, it is also true that a number of Lutheran leaders sensed that there had been a position of anti-Catholicism within American Lutheranism which may have contributed strongly to the resistance of Catholic arguments for public funds to church schools. It is not unreasonable to infer that a more open position of dialogue which had been developing between Lutherans and Roman Catholics in the 1950's and 1960's contributed in some measure to Lutherans being more open to arguments for public funds to church schools based on the prior rights of parents in the education of their children.

At the close of the decade of the 1960's, it is interesting to look back at the statement of Robert Van Deusen which he made before the Congressional subcommittee in 1961. It was a statement based on a particular stance on the matter of church-state relationships, and which reflected a strong commitment to the American Protestant viewpoint of voluntarism with reference to religion in the United States. Van Deusen's argument was quoted in chapter four:

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[1] Minutes of the Inter-Lutheran Consultation on Church and State Relations, November 20-21, 1964 (American Lutheran Church files, Minneapolis), p. 2.

> Public subsidy of the program of any religious group in our pluralistic culture is wrong, since it forces individual citizens to contribute to the financial support of a faith with those (sic) tenets they do not agree.[1]

Many attempts were made to justify the acceptance of public tax funds for non-public schools at both the elementary-secondary level and the higher education level, and in so doing, to wrestle with the problem raised by Mr. Van Deusen. The usual justification was two-fold. At the elementary-secondary level there were benefits which accrued solely to the child. Thus to provide services for the child was not to support the religious tenets of the church. It was merely to provide those services which were the child's by his rights as a citizen. At the higher education level it was often argued that the educational institution was performing a community service and its religious affiliation was only secondary. In response to this argument, A.D. Mattson's statement quoted in the last chapter is particularly **germane** :

> Our church schools are today functioning with the avowed purpose of witnessing to the Christian faith. If this be not true then all the propaganda

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[1] "Lutheran Statement on School Bill", New York Times, March 18, 1961, p. 10.

> in connection with appeals for funds for our Church schools is a gross distortion of the truth.[1]

It is difficult, if not impossible, to show causal relationships in historical studies, and it is not the intent of this study to attempt to do so. It is clear, nonetheless, that with the growth of federal aid to education at all levels during the 1960's, there was a parallel change in the position of Lutherans in the United States on the question of public tax funds for church schools. When only NDEA loans were available late in the 1950's and early in the 1960's Lutherans tended to agree that public funds to higher education within the limits of this legislation was acceptable. On the other hand they tended to look with disfavor upon the idea of public tax funds being used as direct grants to church related institutions of higher education. When such grants were made available through the Higher Education Act of 1965, Lutherans changed their position about the acceptance of public tax funds as direct grants to their institutions of higher education. A similar pattern was seen at the elementary-secondary level. After the 1965 Elementary-Secondary Education Act, Lutherans moved to a position of accepting the funds which had been made available for church schools through this legislation. At the very least one can draw the reasonable conclusion that economic factors were an important contributing factor to the change in position among Lutherans in the United States. Unfortunately this left Lutheranism in the United States open to the charge of being opportunistic and purely prudential in its change of position on the issue of public funds to church schools. While it may be possible that there were some opportunistic Lutherans in this regard, there simply is not enough historical evidence to support a generalization that institutionalized Lutheranism in the United States was opportunistic and prudential in this matter. Such a generalization would require greater evidence for its support. It would call for documented statements by Lutherans which admitted the setting aside of Biblical and Confessional principle, or psychological evidence which could demonstrate that the motivation of Lutheranism in general did, indeed, involve the setting aside of Biblical and Confessional commitments. On the other hand, it certainly can be argued that Lutherans did not show enough foresight on this issue by giving it serious debate before the actual implementation of federal funds for church-related institutions had begun. This lack of foresight undoubtedly helps to contribute to the charge that they were opportunistic and prudential in their acceptance of public funds for their schools when such funds became available.

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[1] Minutes of the Social Trends Committee, October 26, 1962, Exhibit B, p. 1.

By the middle of the 1960's those who had argued and developed the position of "institutional separation" and "functional interaction" with reference to church-state relations had virtually won the day among Lutherans in the United

States. The position may have been dormant in the years prior to the early 1960's. It became explicit in the 1960's and contributed to the change of position among Lutherans in the United States on the question of public tax funds to church schools. By 1967 even the Wisconsin Evangelical Lutheran Synod had followed the other three major groups of Lutherans in the United States. This they did despite the fact that just four years earlier they had said in regular convention:

> ...we neither want nor request the assistance of the State in carrying out our educational endeavors....we would thereby be yielding to the State the direction and control in the training of our children.[1]

Here and there a few voices of protest were raised, but Lutherans in the United States had decided to accept public tax funds for their church schools, to the extent of the allowances of the law.

The implications of the Lutheran position for the future are summed up in the words of Robert Van Deusen quoted in the previous chapter of this study:

> What of the future?...we are already past the turn in the road....the public will feel at home with the idea that there is a double school system: public schools and parochial schools.[2]

Perhaps Van Deusen is correct. Only time will tell. One thing is perfectly clear. If the Lutheran position and practice established for all practical purposes by the middle of the 1960's continues in the future, it will argue for more and more funds to church schools. With the increase of state "parochial" bills, Lutherans will join in the attempt to tap the resources of public tax funds for their educational enterprises.

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[1] Wisconsin Evangelical Lutheran Synod, Proceedings of the Thirty-Seventh Convention, 1963, p. 124.

[2] Robert Van Deusen, "Public Funds Aid Parochial Schools", The Lutheran, Vol. 4 (Sept. 14, 1966), p. 13.

The increased aid to church schools which we have seen develop in the 1960's at the federal level, and which has been seen developing in state legislation in the late 1960's, are indications that the public is becoming more and more willing to contribute to the educational enterprises of the church. Certainly in practice we have closed the decade of the 1960's with a different stance on the question of separation of church and state in the United States, particularly as it relates to public tax funds for nonpublic schools.

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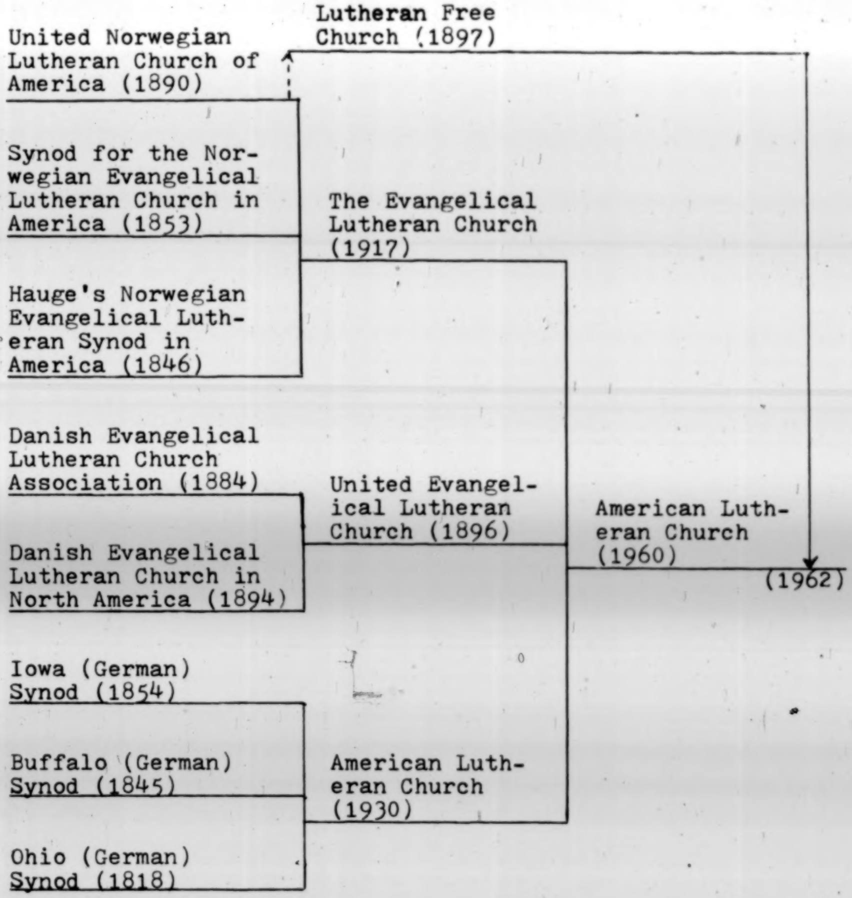
APPENDIX

APPENDIX

THE AMERICAN LUTHERAN CHURCH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The Evangelical Lutheran Church (1917)
Danish Evangelical Lutheran Church Association (1884)
Danish Evangelical Lutheran Church in North America (1894)
United Evangelical Lutheran Church (1896)
Iowa (German) Synod (1854)
Buffalo (German) Synod (1845)
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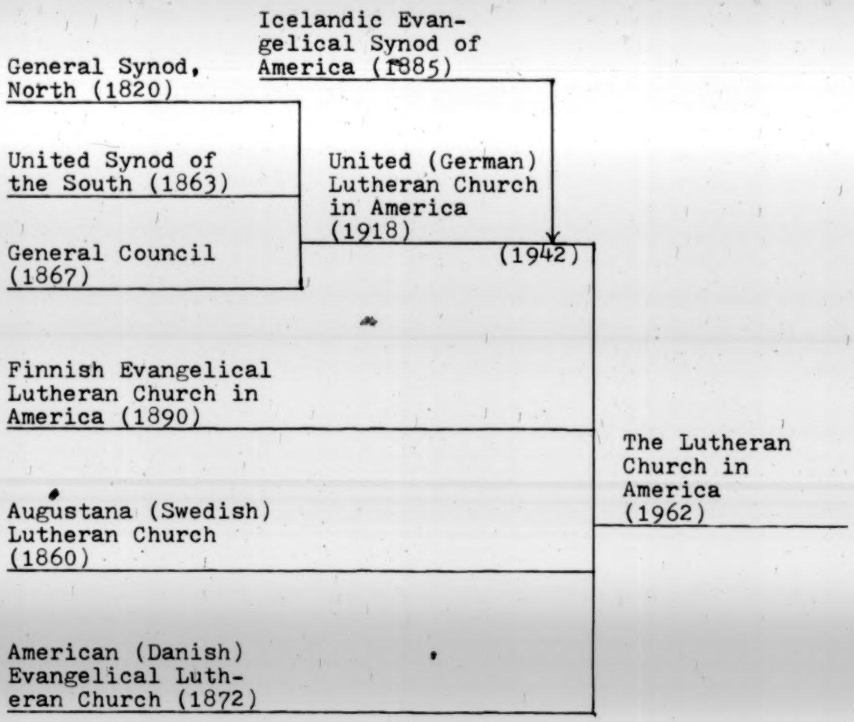
American Lutheran Church (1930)
American Lutheran Church (1960)
(1962)

THE LUTHERAN CHURCH IN AMERICA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United Synod of the South (1863)
United (German) Lutheran Church in America (1918)
General Council (1867)
(1942)
Finnish Evangelical Lutheran Church in America (1890)
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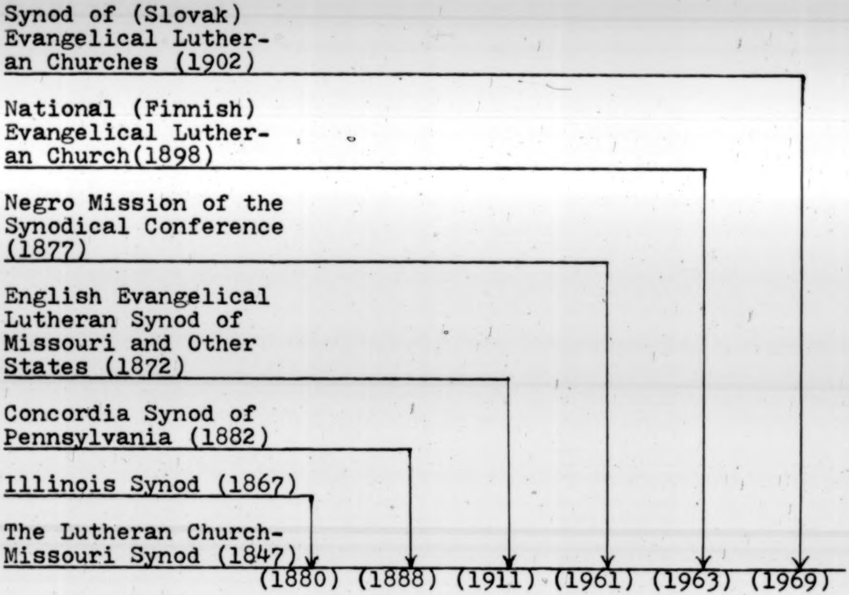
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National (Finnish) Evangelical Lutheran Church(1898)
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English Evangelical Lutheran Synod of Missouri and Other States (1872)
Concordia Synod of Pennsylvania (1882)
Illinois Synod (1867)
The Lutheran Church-Missouri Synod (1847)
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(1961)
(1963)
(1969)

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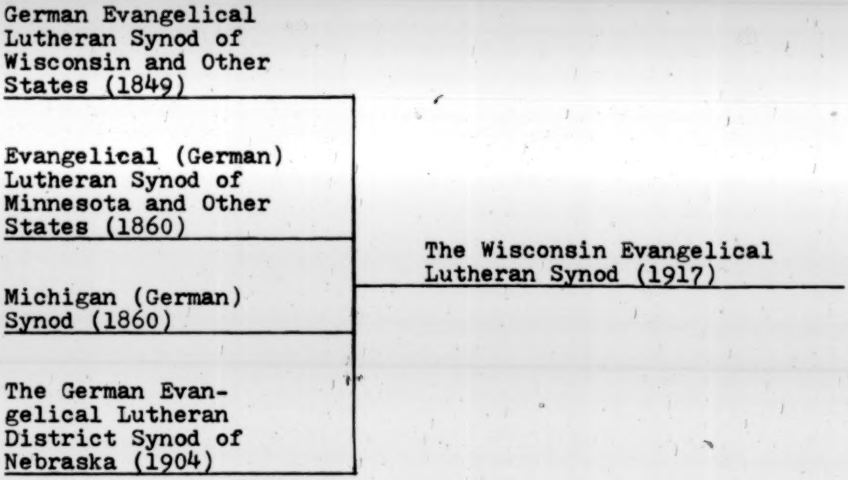
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The Wisconsin Evangelical Lutheran Synod (1917)